IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 485 of 2002

in

SPECIAL CIVIL APPLICATIONNo 2395 of 2001

WITH

LETTERS PATENT APPEALS NOS. 817/2002 AND
LETTERS PATENT APPEALS NOS. 819/2002 TO 1043/2002

WITH

LETTERS PATENT APPEALS NOS.488/2002, 489/2002,
595/2002, 750/2002, 751/2002, 753/2002, 754/2002,
756/2002, 757/2002, 816/2002 & 1064/2002

WITH

LETTERS PATENT APPEALS NOS. 491/2002 AND
812/2002 TO 815/2002

WITH

LETTERS PATENT APPEALS NOS. 540/2002 AND
558/2002 TO 561/2002

WITH

LETTERS PATENT APPEAL NO. 818/2002

AND

LETTERS PATENT APPEAL NO.492/2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

K.D. VOHRA

Versus

KAMLESHBHAI GOBARBHAI PATEL

Appearances:

(1) Mr.K.S.Nanavati, Sr. Counsel for Nanavati
Advocates for the appellants in L.P.A. Nos. 485/2002, 817/2002 and 819/2002 to 1043/2002

(2) Mr.Girish Patel, Sr. Counsel with Mr.Shalin Mehta, Counsel for the appellants in 488/2002, 489/2002, 595/2002, 750/2002, 751/2002, 753/2002, 754/2002, 756/2002, 757/2002, 816/2002 & 1064/2002

(3) Ms. Ketty Mehta, Counsel for the appellants in L.P.A. No.491/2002 and L.P.A. Nos.812/2002 to 815/2002

(4) Mr.I.J.Naik, Counsel for the appellants in L.P.A. Nos.540/2002 and 558/2002 to 561/2002

(5) Mr.N.M.Kapadia, Counsel for the appellants in L.P.A. No. 818/2002

(6) Ms. Nita Panchal for Mr.Shaktisinh Gohil, Counsel for the appellant in L.P.A. No. 492/2002

(7) Mr.S.N.Shelat, Advocate General with Mr.A.D.Oza, Government Pleader for the State of Gujarat in all appeals

(8) Mr.D.N.Patel, Counsel for the Gujarat Public Service Commission

(9) Mr.Paresh Upadhyay, Counsel for the respondent No.1

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 11/12/2002

ORAL COMMON JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI for the Court)

1. This group of appeals has been preferred by persons who were appointed as ad hoc lecturers pending the availability of the regular recruits through the Gujarat Public Service Commission (GPSC for short), to the post of Lecturer, Gujarat Educational Service, Class II, (Collegiate Branch), against the common judgement and order dated 15th July 2002 passed by the learned Single Judge allowing the Special Civil Applications No.2395 of 2001 and other cognate matters which were filed by the candidates selected through the GPSC as per the Recruitment Rules applicable to the said post and rejecting the Special Civil Application No. 4396 of 2001 and other cognate matters which were filed by the ad hoc appointees, who were required to be replaced by the GPSC selectees.

2. In Special Civil Application No. 2395 of 2001 and its cognate matters which were filed by the direct selectees through the GPSC, it was prayed that the petitioners should be appointed to the posts of Lecturer as per the recommendation of the GPSC. The GPSC had issued an advertisement on 15th June 1990 for recruitment to the posts of Lecturer, Gujarat Educational Services, Class II, (Collegiate Branch) to the Government Colleges in different subjects in respect of 475 vacancies which had arisen and many of which were being manned by the ad hoc appointees over a long period of time. According to these petitioners, they were duly selected by the GPSC and recommended for the post, and that, as per the extant instructions of the Government, the appointment pursuant to the GPSC recommendations could not have been delayed beyond the period of six months. It was pointed out that

300 lecturers were continued on ad hoc basis subject to the availability of the candidates selected through the GPSC, but, for the reasons best known to the Government, these regularly selected candidates were not issued appointments. Amongst these regularly selected candidates, there were also some candidates who while working on ad hoc basis came to be selected by the GPSC. Some of the ad hoc lecturers locally appointed were drawn from government schools from their Class III posts in which their lien was retained, while the rest were locally appointed direct on ad hoc basis. All the ad hoc appointees knew that they were to hold the post only till the availability of the GPSC candidates. Despite the PSC asking the Government to explain why the appointments were not being made pursuant to its recommendation, the Government was delaying the matter. These direct selectees therefore prayed for being appointed pursuant to their selection by the GPSC. As the matter now stands, appointment orders of 132 direct selectees were issued on 10th November 2001, and further appointments of 210 such GPSC selectees have been issued on 9th October 2002 after the decision of the learned Single Judge. It is stated that many of these have joined their posts except 123 direct selectees who, though appointed, are yet not posted in view of the interim orders which operated in favour of the ad hoc appointees.

2.1 It appears that, during the pendency of Special Civil Application No. 2395 of 2001, which was filed by direct selectee, the present three appellants of the Letters Patent Appeal No. 485 of 2002 and three other ad hoc appointees had, at their instance, been impleaded as party respondents Nos. 5 to 10. The original respondents Nos. 5, 6 and 8 are the appellants of the Letters Patent Appeal No. 485 of 2002. All other Letters Patent Appeals are by such ad hoc appointees.

3. In Special Civil Application No. 2992 of 2001 and other cognate matters, the contentions raised by the ad hoc appointees were almost common in all their petitions and their main grievance was that, though initially they were appointed on ad hoc basis, their appointments having been made after being selected by the local Committee constituted as per the resolution / circular dated 21st December 1992, which comprised of Joint Director of Education or Deputy Director as well as Principal and Lecturer of the respective college and one Expert from amongst the panel of Lecturers, in accordance with the requirements of the Recruitment Rules as regards the educational qualifications and they, having been continued for a number of years, have acquired a right to

continue on the post of lecturer. Their appointments should be considered to have been duly regularized and they have a better right to hold the said post over the direct selectees. According to them, their appointments were made on the basis of merit after they were tested by the Interview Committee constituted under the aforesaid circular. It is contended by them that, since they had a long teaching experience and have been teaching in various colleges without any adverse reports against them, any action of discontinuing them for accommodating the fresh candidates was violative of their fundamental rights guaranteed by Articles 14 and 16 of the Constitution. It is also their case that the Government had regularised similar temporary employees as Doctors in Ayurvedic Colleges, as also the employees of the Narmada & Water Resources Department, without being required to undergo the process of selection through the GPSC. Denial of similar treatment to these ad hoc appointees was, therefore, violative of their fundamental right to equality guaranteed by Articles 14 and 16 of the Constitution, as also their right to life under Article 21 of the Constitution. The ad hoc lecturers therefore prayed that they should be regularised as Lecturers.

3.1 On 15th July 2002, the learned Single Judge, while allowing the petitions of the direct selectees, rejected the prayer of the appellants for continuing them in service, holding that they would be treated as surplus but not entitled to any regular salary or financial advantage.

3.2 The case of the appellants of Letters Patent Appeal No. 540, 558 to 561 of 2002 and other matters was that they were interviewed by the duly constituted Staff Selection Committee in January 1990 and appointed as Lecturers in Electronics in the Government Colleges. They applied pursuant to the advertisement dated 15th June 1998 issued by the Gujarat State Public Service Commission for the post of Lecturers, but they received a letter of rejection on the ground that they did not possess the prescribed educational qualifications. In May 1999, they represented to the Government for regularising their ad hoc appointments, but without any response. They apprehended that the GPSC selectees may be appointed in their place and their services would be terminated and therefore, they filed the petitions from which these appeals arise. They also relied upon the affidavit-in-reply dated 14th June 2001 filed on behalf of the State Government for claiming to be regularised as Lecturers from the date of their initial ad hoc appointment notwithstanding the change in the stand by

the Government in its subsequent affidavit dated 30th August 2002.

3.3 The Letters Patent Appeal No. 818 of 2002 is preferred by the ad hoc appointee who had approached the Court for regularisation on the ground that he had put in 11 years of service as ad hoc appointee. It was his case that, though he was desirous of getting appointment through the PSC, no selection process was held by the State Government for more than 10 years. His petition in which he raised contentions similar to those raised by the other ad hoc appointees, also came to be rejected by the learned Single Judge alongwith other matters, which decision is challenged on the grounds similar to those raised in other appeals.

3.4 Letters Patent Appeal No. 492 of 2002 is filed by the original respondent No.7, who came to be added in Special Civil Application No. 2395 of 2001 alongwith other five persons as respondents Nos. 5 to 10. In this appeal, contentions identical to those raised in other appeals by the ad hoc appointees have been raised and hence, they need not be repeated.

4. The stand taken up by the State Government in the affidavit-in-reply dated 27th April 2001 filed in Special Civil Application No. 2395 of 2000 was that the posts of lecturer in Gujarat Educational Services (Collegiate Branch) are Class II posts and were required to be filled in by consultation with the GPSC. However, in accordance with the provisions contained in the proviso to Regulation 3 of the GPSC (Exemption from Consultation) Rules, 1960, appointment to such posts can be made by the Competent Authorities for a period of one year without such consultation. Since considerable time elapses in getting recommendation from the GPSC of such candidates, the ad hoc appointments have been made from time to time so as to ensure that the interest of the large number of students was not affected adversely for the reason of non-availability of teaching staff. It was stated that several candidates selected by the local selection committee constituted by the Commissioner of Higher Education under its circular dated 21-12-1992, came to be appointed on ad hoc basis. Similarly, several candidates who were working in the government schools and associated with teaching were also appointed on ad hoc basis keeping their experience and educational qualifications in view, as per the circular dated 20-12-1991 issued by the Commissioner of Higher Education in this regard. The above two circulars are produced at Annexure "I" and "II" to the said affidavit-in-reply. It was stated that, as

per the scheme of the such ad hoc appointments services of all such ad hoc appointees were to be terminated on completion of academic term. However, such ad hoc appointees had obtained interim orders from time to time from the Courts against such termination and therefore, they were continued in service on ad hoc basis. Ultimately, it came to be decided in a group of petitions on 12-5-1999 (Special Civil Application No. 841 of 1998 and other cognate matters decided by Hon'ble Mr. Justice S.K.Keshote), that such ad hoc appointees were to be continued only till availability of the candidates recommended by the GPSC. A group of appeals preferred by the ad hoc appointees (Letters Patent Appeal No. 1057 of 1999 and other cognate appeals) against the said decision dated 12-5-1999 came to be disposed off by the Court on 29-9-1999, and the appellants were permitted to withdraw their original petitions, without reserving any liberty for them to file fresh petitions and to make representations. The appeals were disposed of on the ground that they did not survive in view of the withdrawal of the petitions. It was stated that, pursuant to the said decision which required the representations of these persons to be considered, they had made the representations which were considered by the Government. In the meanwhile, to fill up the posts of lecturers available in the different subjects, necessary requisitions were sent to the GPSC in the year 1997, with reference to which the Commission issued an advertisement and on completion of process of selection, have recommended the names of selected candidates to the Government for appointment. It was also stated that, in view of the Government having accepted the package of University Grant Commission recommendations in respect of all the teaching staff, it had undertaken the task of reviewing the strength of the sanctioned establishment of lecturers as per the norms of the UGC guidelines. It was then stated that the Government was making all possible endeavours to keep balance between those who have been directly selected through the GPSC and those who are working on ad hoc basis and who are required to be considered as per the guidelines issued in group of appeals, and that, appropriate action would be taken when decision was reached. It was also stated that all possible endeavour was made by the Government to accommodate and appoint the persons selected through the PSC though such selected person had no right to seek a mandamus for appointment.

4.1 In the affidavit-in-reply filed on 14th June 2001, in context of the direction of the High Court to decide the representation of the ad hoc lecturers as

early as possible and, in any case, before 10th June 2001, which was issued on 4-5-2001 on the basis of the earlier directions given in Letters Patent Appeal No. 1057 of 1999 on 29-9-1999, the Government had taken a decision that the services of all the 330 persons appointed as lecturers in Government Colleges on ad hoc basis, from time to time, by the Commissioner of Higher Education pursuant to their selection by the local Selection Committee constituted under the circular of 21-12-1992 should be regularized from the date of their appointment as such, as was done in cases of Medical Officers (Ayurved) by the Health and Family Welfare Department by its resolution dated 4-10-1999. It was further stated that it was decided that, for regularizing the services of all such ad hoc appointees, a reference to the GPSC should be made to obtain its approval as a special case. All the 64 persons who had lien on the posts in respective schools from which they were drafted and appointed as ad hoc lecturers in Government Colleges were to be repatriated to their original posts. It was also decided that, after working out the subject-wise number of posts of Lecturers in Government Colleges in view of new workloads on account of revision of UGC scales and after accommodating the ad hoc appointees, if clear posts of lecturers of the respective subjects become available, the candidates recommended by the GPSC were to be considered for appointment as per their rank in the select list. It was further decided, as stated in the said affidavit-in-reply, that, in the eventuality of the ad hoc appointees being declared surplus, their names would be registered by the Commissioner of Higher Education and they would be adjusted by giving appointments on the posts that may be available on account of retirement, resignation, promotion, death etc. in future.

4.2 In the affidavit-in-reply dated 30th August 2001, the Government, however, took a stand different from that which was taken in its affidavit dated 4th June 2001. It was stated that a High Level Committee held its meeting on 16th August 2001 to consider the issues relating to ad hoc lecturers / regular lecturers selected through the GPSC in the Education Department and after due deliberations over various issues and thorough examination of the background of the case and various orders passed by the High Court in various matters, final as well as interim, and also keeping in view the legal provisions and taking into consideration the representations submitted by the ad hoc employees, the Committee had come to the conclusions which are narrated in paragraph 3 of the said additional affidavit-in-reply.

Accordingly, it was decided that the candidates duly recommended by the GPSC shall be given appointments by the State Government. It was decided that the appointments may be given to the candidates recommended by the GPSC in various subjects against clear vacancies now worked out as per the UGC guidelines. It was also decided to repatriate the ad hoc appointees working in Government Colleges, back to their respective cadres in which they were having their lien, subject to the vacation of the stay order in this regard by the High Court. It was noted that, out of 70 appointees having such lien, 11 were selected by the GPSC and 4 could be continued against clear vacancies available after accommodating the GPSC selectees and ad hoc appointees. But the repatriation could only be made if and when the High Court vacated status quo orders. The Committee further noted that, out of 341 lecturers who were presently working on ad hoc basis, 77 were already selected by the GPSC. It was found that, on account of availability of vacancies as per permissible strength and after accommodating GPSC selectees, several posts continued to be available against which 122 ad hoc lecturers could be continued. It was noted that, in a few subjects, appointments were in excess of the permissible posts which had been worked out as per the UGC norms, and that the services of 22 ad hoc appointees will have to be declared surplus with varying length of service in different subjects, on the principle of "last come first go". The Committee further noted that, for giving appointment to all 335 GPSC selected candidates, services of 120 ad hoc appointees will have to be declared surplus forthwith. It was observed that, in view of the government policy to start government colleges in tribal talukas where there was no college available, four new government colleges were started this year, and similarly, some more colleges were likely to be opened next year and keeping in view these aspects, the Government had taken a lenient view with regard to regularisation of ad hoc appointees which could be considered by the State Government under Article 309 of the Constitution, as a one-time measure. It was then stated in the affidavit that, in view of the policy decision taken by the High Level Committee, it was decided to repatriate the ad hoc appointees working in the government colleges, on lien, back to their respective cadres subject to the vacation of the interim orders of the High Court so as to enable the State to implement its policy decision. It was also stated that, pursuant to the said decision, order of appointment in respect of 95 candidates selected by the GPSC were issued on 27th August 2001 against clear vacancies. The

petitioner of Special Civil Application No. 2395 of 2001 who was selected by the GPSC was one such candidate who was given appointment.

4.3 In the further affidavit dated 18th October 2001 in Special Civil Application No. 2992 of 2001, it was stated that some of the petitioners had withdrawn their petitions and they therefore could not approach the High Court again, on the principle of res judicata. Statement at Annexure "A" of that affidavit in reply showed the details of such persons who had unconditionally withdrawn their petitions.

5. In the group of Special Civil Application No. 841 of 1998 and 17 other matters, including those which were filed in the year 1990 by the ad hoc lecturers who were apprehending termination of their services on the ground that the GPSC selected candidates would replace them, the learned Single Judge, by his judgement and order dated 12th May 1999, holding that in the eventuality of the availability of the selected candidates, these petitioners had no right to continue on the post and immediately on joining of the selected candidates, the respective petitioner would have to relinquish the post, directed the GPSC to complete the selection process in different subjects for the post of lecturers within six months from the date of the receipt of the order. The Court observed that ad hoc and temporary appointments give rise to manifold litigations and a sense of instability in service resulting in frustration and dissatisfaction amongst the appointees. It was observed that the time has come where the Court has to take appropriate steps and measures to see that the State of Gujarat, its functionaries and officers work within the framework of the Constitution as well as to see that, because of inaction or omission, unnecessary and avoidable litigations may not come before the Court. In Letters Patent Appeal No. 1057 of 1999 and cognate appeals, these petitioners who had appealed against the said order of the learned Single Judge, withdrew their petitions without reserving any liberty to file fresh petitions on the same cause of action. This is clear from the order dated 29-9-1999 passed by the Division Bench holding that the Letters Patent Appeals did not survive and allowing the original petitioners to make a fresh representation in the matter. On the basis of withdrawal of these petitions, it was rightly urged that, since no liberty was reserved by these ad hoc lecturers who had filed the earlier petitions and are also amongst those who had filed the present petitions from which these appeals have arisen, the present petitions were not

maintainable at their instance on the same cause of action. However, there were other ad hoc employees who had filed the petitions for the first time and the same questions arose even in their case. Therefore, having regard to the general nature of the disputes involved, it would not be appropriate to shun consideration of the issues on any such technical ground and the decision that would be taken would obviously apply to all the similarly situated persons.

6. There was yet another group of petitions filed by ad hoc appointees as lecturers being Special Civil Application No. 2843 of 1971 and other cognate matters which came to be decided by Hon'ble Mr. Justice M.R.Calla on 9th March 2001. In all those petitions, a grievance was raised by the ad hoc lecturers that appointments were being given for a limited period till the end of the academic term and though no candidates were yet selected through the GPSC, they were not being given the salary for the vacation period though they were being re-engaged as ad hoc employees on the commencement of the new academic term. In that petition, the learned Single Judge issued certain directions in paragraph 15 of the judgement which included the direction that the services of such ad hoc employee shall not be terminated until a regularly selected candidate was available for appointment in the concerned subject. Direction No. (ii) is material to be noticed in the present context and therefore, it is reproduced hereunder:-

> "(ii) If regularly selected candidates are available, they will not be made to wait and such regularly selected candidates shall be given appointment and the ad hoc appointees shall have to make room for them. Of course in doing so, the government would follow the order of seniority according to the length of the service of the ad hoc appointees in the respective Branch / Speciality / Subject. In other words, amongst the ad hoc appointees in a given subject or speciality or branch, the candidate who was appointed at the earliest point of time will be the last candidate to be replaced."

6.1 The said judgement and order dated 9th March 2001 of the learned Single Judge has not been challenged and therefore, the aforesaid directions remained operative and binding.

6.2 In the present group of matters, namely, Special Civil Application No. 2395 of 2001 and other petitions which were filed in 2001, an order was made on 4th May 2001 by Hon'ble Mr. Justice M.S.Shah, taking note of the earlier order of the Division Bench, dated 29-9-1999 in Letters Patent Appeal No.1057 of 1999 and cognate appeals, by which the ad hoc lecturers were allowed to file representation to the Government while permitting them to withdraw their petitions, gave a direction that the State Government should decide the representations of ad hoc lecturers or their association as early as possible, in any event by 10-6-2001. The above directions will have relevance on the question of appreciating the government's appointing a High Power Committee for considering the question and taking a decision different from the one which was reflected in the earlier affidavit of the government when it was decided to undertake the process of regularising the ad hoc lecturers and for that purpose, to refer the matter to the GPSC. However, before that could be done, the decision of the High Power Committee was taken by which the direct selectees were to be given appointments, replacing the ad hoc lecturers.

7. All the learned Senior Counsel appearing in these Letters Patent Appeals have argued their respective appeals and adopted each others arguments. The learned counsel appearing in Letters Patent Appeal No. 818 of 2002 and 1818 of 2002 and the learned counsel appearing in Letters Patent Appeal No. 492 of 2002, also adopted those contentions, pointing out the individual facts of their case. These contentions of the learned counsel in all these appeals are as under :

[i] The matter should be viewed in context of higher education and not ordinary government offices. Therefore, interest of the student community should be kept in mind while considering whether these ad hoc lecturers who have put in several years of service, should be regularised by relaxing the rules.

[ii] Both the sides are innocent and it is not as if the ad hoc lecturers are wanting in qualifications. In fact, they have acquired experience which gave them an edge over the fresh GPSC recruits, and therefore, it would be in the interest of the student community and education system to regularise them.

[iii] The GPSC procedure was not started for more than a decade and these ad hoc appointees were continued in the public interest. Their temporary appointments could have been made without consultation of the GPSC only for a period of one year, and therefore, their continuance beyond one year of their initial appointment should lead to an inference or presumption that the requirement to consult the PSC was deemed to have been relaxed under the power of relaxation vested in the Government under Rule 16 of the Gujarat Civil Services Qualifications & Recruitment (General) Rules, 1967.

[iv] The non-initiation of consultation process for recruitment for a decade resulted in breakdown of consultation rule and therefore, it should be assumed that the Government must be deemed to have relaxed the recruitment rules and since their initial appointment was by selection made by select committee, they should be treated as having been regularly recruited by the mode of direct selection by such Committee instead of the PSC.

[v] Thirty-three of the ad hoc lecturers were not called by the GPSC on the ground that they were age barred. They should have been given an opportunity to compete by relaxing their age.

[vi] The State Government had held out a promise that ad hoc appointees will be regularised and therefore, it was estopped from taking a different stand. There would be legitimate expectation on the part of the ad hoc employees that they will be continued and regularised. Regularisation should be done, because, the Government has created this situation.

[vii] Decisions of the Apex Court fall in three categories. The Apex Court has, in some cases, decided strictly according to the Rules and quashed the appointments which are against the rules. In some cases, while holding that the rules of recruitment should be followed, the Apex Court has not disturbed the appointments on facts, and, in the third category, directions to regularise the ad hoc employees by exercising power to relax have been given. According to the

learned counsel, instead of relying on a precedent of a particular case, the general trend of all the precedents should be kept in mind and a precedent should be evolved keeping in view the law laid down by all these decisions.

[viii] The appointments of these ad hoc lecturers were not illegal, but made by adopting an alternate method devised by the State Government itself, by its circular dated 21st December 1999, and therefore, there was no back-door entry in the appointments of these ad hoc lecturers. If an appointment contrary to Rules is continued for many years, the Court will presume that relaxation power was exercised.

[ix] Consultation with the GPSC was not mandatory and therefore, non-consultation will not vitiate the appointment.

[x] In case of some ad hoc lecturers, they were held to be ineligible on the basis of higher qualifications prescribed under the amended rules. It was argued that, in such cases, the subsequent amendment in the rules could not have been applied to such ad hoc lecturers who were duly qualified when they were initially appointed as per the then existing recruitment rules.

[xi] General parameters should be kept in mind while deciding the case and these are; what the justice require, what the law require, the public interest involved, the nature of default committed by the Government, and the innocent character of the parties.

7.1 In support of their contentions, the learned Senior Counsel for the appellants have relied upon the following precedents :

[a] Decision of the Supreme Court in State of Haryana v. Piara Singh, reported in AIR 1992 SC 2130 was relied upon for the proposition that the persons who are ad hoc or temporary employees have a right to claim regularisation and the authorities are under an obligation to consider their case for regularisation in a fair manner keeping in view the principles enunciated by the Court. It will be noticed that while making this

observation, the Supreme Court also held that blanket directions given for regularisation cannot be sustained.

[b] Decision of the Supreme Court in Jakob M. Puthuparambil v. Kerala Water Authority, reported in AIR 1990 SC 2228 was cited to point out that a direction was given for regularising the services of the employees who were working on the establishment for long spells and had the requisite qualifications for the job. It was observed that such employees should not be thrown out but their services should be regularised as far as possible. It would be noticed that this decision was rendered in context of Rule 9(a)(i) of the Kerala State & Subordinate Service Rules, 1958 in which it was provided that, where it is necessary in the public interest, owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a service, class or category and there would be undue delay in making such appointment in accordance with these rules and the Special Rules, the appointing authority may appoint a person, otherwise than in accordance with the said Rules temporarily. It was held by the Court in paragraph 15 of the judgement that the rule was not intended to fill a large number of posts in the service but only those which could not be kept vacant till regular appointments were made in accordance with the rules. But once the appointments continued for long, the services had to be regularised if the incumbent possessed the requisite qualifications, as was done by sub-rule 2(e) of Rule 9. It was held that if the rule was so interpreted, it seemed clear that the employees who had been working on the establishment since long and who possessed the requisite qualifications for the job as obtaining on the date of their employment must be allowed to continue on their jobs and their services should be regularised. It was held that if Rule 9(a)(i) was interpreted consistently with the spirit and philosophy of the Constitution, which was permissible to do, without doing violation to the Rule, it followed that the employees who had served on the establishment for long spells and had the requisite qualifications for the job should not be thrown out, but their services should be regularised as far as possible.

[c] Decision of the Supreme Court in Government of Orissa v. Hara Prasad Das, reported in AIR 1998 SC 375 was cited for the proposition that, mere empanelment or inclusion of the name in the selection list did not give the direct selectee a right to be appointed, and that if the Government decided not to make further appointments for a valid reason, it could not be said that it acted arbitrarily by not appointing those whose names were included in the select list. Whether to fill up a post or not was a policy decision and unless it is shown to be arbitrary, it would not be open to the Tribunal to interfere with such decision of the government and direct to make appointments. This matter arose from a petition filed by those who had appeared in the selection process. The petition was resisted by the government on the ground that only six posts were notified and no more posts can be filled up on the basis of selection list.

[d] Decision of the Supreme Court in H.C.Puttaswamy v. Hon'ble the Chief Justice of Karnataka High Court, reported in AIR 1991 SC 295 was cited to point out that the Supreme Court while holding that the appointments made by the Chief Justice of the High Court without consulting the GPSC were not proper, issued a direction that, on humanitarian ground, all such appointees should be treated as regularly appointed with all benefits of past service.

[e] Decision of the Supreme Court in Karnataka State Private College Stop-Gap Lecturers' Association v. State of Karnataka, reported in AIR 1992 SC 677, was cited to point out that, in a case where teachers were appointed temporarily, by privately managed colleges receiving grants-in aid, sought regularisation of their services by invoking principle of equitable estopple arising from implied assurance due to their continuance, as such, for years with a break of a day or two every three months, the Supreme Court directed that the services of such temporary teachers who had worked as such for three years including breaks shall not be terminated and they shall be absorbed as and when regular vacancies arise. It was also directed that if regular selections have been made, the government shall create additional posts to accommodate such selected candidates. In that case, there was no question of

availability of any candidate selected as per the Recruitment Rules framed under Article 309 of the Constitution through the PSC.

[f] Decision of the Supreme Court in All Manipur Regular Posts Vacancies Substitute Teachers' Association v. State of Manipur, reported in AIR 1991 SC 2088, was cited to point out that, it was observed by the Supreme Court that, if the direct recruitment takes place on one hand and substituted teachers are also directed to be regularised subsequently, it would create an enormous problem for the department to accommodate both the categories of persons. Taking all these factors into consideration, the Court made an order, earlier, directing the State Government to consider the case of regularisation of the appellants before making direct recruitment. The Court ordered that substituted or ad hoc teachers who had put in five years of service or more on the specified date shall be regularised without pay by the D.P.C. and such regularisation would be subject to their possessing the required qualifications at the time of their initial appointment. It was also directed that those who had rendered less than five years service on the said date, shall be allowed to appear before the D.P.C. for selection and those who are selected, shall be regularised. It was also directed that the services of those who did not appear before the D.P.C. or could not be selected by the D.P.C. could be terminated unless their services were required for a further period.

[g] Decision of the Supreme Court in State of Karnataka v. B. Suvarna Malini, reported in AIR 2001 SC 606 was cited to point out that, in a case where the lecturers appointed by way of stop-gap arrangement had put in 10 to 20 years of service, the Court observed that such cases involve not only a question of law, but also human problem inasmuch as these part-time lecturers had served in different colleges for a long period and treated as regular servants, and they will not be able to get themselves engaged anywhere else. Moreover, their experience in teaching will be a great loss to the student community if they were removed. Reliance was placed on paragraph 9 of the judgement in which it was observed that, though the selection of

such part-time lecturers was not made by the Public Service Commission, yet there was a process of selection and it appeared that unqualified people were not appointed as part-time lecturers. Part-time lecturers having been formed a class by themselves and for some reason or the other, they having been deprived of the benefits of the earlier directions of the Court on account of inaction on the part of the State Government, the matter was re-examined by a Committee of Experts as to how best their services could be utilized without diluting the quality of teaching. Earlier in the judgement, it was noticed that High Powered Committee considered the problems of the part-time lecturers in great detail and, bearing in mind the relevant decision on the question, made the recommendation for their absorptions. It was recommended that special recruitment rules will have to be framed by the State Government in exercise of powers conferred on it by the Karnataka State Civil Services Act, 1978 for the purpose of absorption. Section 8 of that Act gave rule-making powers to make rules to carry out the purposes of the Act. The absorption rules were framed in exercise of these Legislative powers. The Court held that, these absorption rules were made to solve human problems and that the High Court committed an error in striking them down, because, they were validly made after putting them to objection to the general public and consulting the PSC before being put before the State Legislature to have its concurrence. It was held that it is not that, in every case, the Court would be justified in striking down the process of absorption or requisition, more so when such absorption has been made as a legislative measure and that also as a one time measure. In the present case, no such attempt is made for regularising the ad hoc employees by resorting to such statutory powers.

[h] Decision of the Supreme Court in Narendar Chadha v. Union of India, reported in (1986) 2 SCC 157 was cited to point out that, the Supreme Court held that, where persons have been allowed to function in higher posts for 15 to 20 years with due deliberation, it would be certainly unjust to hold that they have no sort of claim to such posts and could be reverted unceremoniously or treated as persons not belonging to the Service

at all, particularly where the Government is endowed with the power to relax the rules to avoid unjust results.

[i] Decision of the Supreme Court in Shainda Hasan v. State of Uttar Pradesh, reported in 1993 SCC 48 was cited to pointed out that, while holding that the High Court had rightly held that the relaxation granted by the selection committee to be arbitrary, and that in the absence of statutory rules providing power of relaxation, the advertisement must indicate that the selection committee / appointing authority has the power to relax the qualifications, the Supreme Court observed that, asking the appellant to leave the job after 16 years would be doing injustice to her. In paragraph 8 of the judgement, it is stated that the case was taken up in chambers on April 20, 1990 when the learned counsel for the State after obtaining instructions from the University, agreed with the Court that asking the appellant to leave the job after 16 years would be doing injustice to her. Accordingly, the directions were issued to grant necessary approval to the appointment of the appellant as the Principal w.e.f. the date she was holding the said post.

[j] Decision of the Supreme Court in Dr. A.K. Jain v. Union of India, reported in 1987 (Supp) SCC 497, was cited to point out that, in a case where the petitioners who were still ad hoc doctors on the zonal railways, were those doctors who either failed to appear in the combined medical services examination held by the UPSC or after appearing had failed to get regularised in accordance with the prescribed rules and regulations for regular appointments, and their services had to be terminated and as such, there had been neither any arbitrary nor illegal action on the part of the respondents, nor any violation of the fundamental rights guaranteed by Articles 14 and 16 of the Constitution, the Supreme Court gave a direction after hearing the counsel for both the sides, inter alia, to the effect that the services of doctors appointed on ad hoc basis upto 1st October 1984 shall be regularised in consultation with the UPSC on the evaluation of their work and conduct on the basis of their confidential reports in respect of the period subsequent to October 1, 1982, which evaluation

was to be done by the UPSC. The Court dismissed the petitions of such medical officers who were appointed subsequent to October 1, 1984 with certain directions.

[k] Decision of the Supreme Court in G.S.Lamba v. Union of India, reported in (1985) 2 SCC 604 was cited to point out that, in paragraph 26 of the judgement, the Supreme court held that, once the power to relax is given, mandatory rule exists and an action in derogation of the rule has been repeatedly taken year after the year, it would be a permissible inference that the action was taken in relaxation of the rule for which the power exists in rule 29(a) of the Indian Foreign Service Branch "B" (Recruitment, Cadre, Seniority & Promotion) Rules, 1964. It was held that, to hold otherwise would be to come to a rather disconcerting conclusion that a body like the Government of India acted deliberately in contravention of the mandatory rule from year to year. It would, as far as possible, be proper to avoid such an inference unless it is inescapable. Rule 29(a) conferred power to relax any of the provisions of the Rules of 1964 and in context of the quota rule, the Court held, in paragraph 27 of the judgement, that, assuming that there was a failure to consult the the Union Public Service Commission before exercising the powers to relax the mandatory quota rule and further assuming that the posts in the integrated grade II and III were within the purview of the Union Public Service Commission and accepting for the time-being that the Commission was not consulted before the power to relax the rule was exercised, yet the action taken would not be vitiated, nor would it furnish any help to Union of India which itself cannot take an advantage of its failure to consult the Commission.

[l] Decision of the Supreme Court in Baij Nath Sharma v. Hon'ble Rajasthan High Court, reported in (1998) 7 SCC 44 was cited to point out that it was held that the second petition filed after withdrawing the petition was not barred by principle of res judicata. It will be noticed from paragraph 5 of the judgement that when the earlier petition was withdrawn, liberty was granted to the petitioner to file another petition "if occasion arises".

[m] Decision of the Supreme Court in B.C.Chaturvedi v. Union of India reported in (1995) 6 SCC 749 was cited to point out that, in the concurrent judgement of Justice Hansaria in paragraph 20, it was observed that, it would be wrong to think that other Courts are not to do complete justice between the parties. It was observed that it may be remembered that the framers of the Constitution permitted the High Courts to even strike down a Parliamentary enactment. The High Court would be within its jurisdiction to modify punishment / penalty by moulding the relief which power it undoubtedly had.

[n] Decision of the Supreme Court in Dr. M.C. Bindal v. R.C.Singh, reported in AIR 1989 SC 134 was cited to point out that it was observed in paragraph 12 of the judgement that, it was well settled legal position that the duty to consult the Commission in the matter of appointment to civil posts by the government is not mandatory, but directory, and as such, the absence of consultation with the State Public Service Commission does not render any appointment made by the government in civil posts invalid or illegal. The Supreme Court also, however, held in paragraph 12 of the judgement that, it cannot also be contended that since the duty to consult the Public Service Commission in the matter of making appointments to civil services of the State was directory and not mandatory, the appointment by the government cannot be question or interfered with by the Court. In that case, candidature for the post in question had already been withdrawn by the Public Service Commission and the Court held that, therefore, the question of validity or invalidity of the appointment to the said post was no longer open to be considered by the Court.

[o] Decision of the Supreme Court in Rabinarayan Mohapatra v. State of Orissa, reported in (1991) 2 SCC 599 was cited to point out that, where the school teachers were working for almost four years, the respondents were directed to treat the appellant as regularly appointed teachers. It is pointed out that the Court quoted with approval the observations made in Rattan Lal v. State of Haryana reported in AIR 1987 SC 478 in which it was observed that the Government appeared to be exploiting the situation where the teachers who

constituted bulk of the educated unemployed were compelled to accept the job on an ad hoc basis with miserable conditions of service. It was observed that the policy of ad hocism followed by the Government for a long period had led to the breach of Article 14 and Article 16 of the Constitution, and that the State Government was expected to function as a model employer. The Court deprecated the policy of the State Government under which ad hoc teachers were denied the salary and allowances for the period of the summer vacation by resorting to the fictional breaks.

[p] Decision of the Supreme Court in I.J.Divakar v. Government of Andhra Pradesh, reported in (1982) 3 SCC 341 was cited for the proposition that, inviting the applications for a post does not by itself create any right to the post in the candidate who in response to the advertisement makes an application. His application only makes him eligible for being considered for the post. It was held that the temporarily appointments which were made in that case were within the power of the Government under Rule 10(a)(i)(1) of the A.P. State and Subordinate Services Rules, and that, in the circumstances of the case, it had become compelling necessity to regularise services of such temporary servants for peace and harmony in service. It was held that the action of the government was justified and was in consonance with the Rules. However, on equitable considerations and in order to do justice between the parties and not to leave the appellants, fresh young engineering graduates, in lurch, the Court directed that the Commission shall proceed to finalise the list of selection on the basis of the viva voce tests conducted and marks assigned and forward the same to the Government within two months.

[q] Decision of the Supreme Court in Gopal Krushna Rath v. M.A.A. Baig, reported in AIR 1999 SC 2093 was cited for the proposition that when the selection process has actually commenced and the last date for inviting application is over, any subsequent change in the requirement regarding qualifications by the University Grant Commission will not affect the process of selection which has already commenced, otherwise it would involve issuing a fresh advertisement with the new

qualifications.

[r] Decision of the Supreme Court in Gujarat State Deputy Executive Engineers' Association v. The State of Gujarat, reported in J.T. 1994 (3) SC 559 was cited to point out that, where the direction was given to operate and implement the revised select list by the High Court, the Supreme Court in paragraph 5 of its judgement held that the High Court could not have given direction to appoint direct recruits from the waiting list prepared in 1980 in the vacancy which according to the High Court should have been available as that would amount to interfering with discretion of Government which as a matter of policy may decide to fill lesser vacancies.

[s] Decision of this Court in D.D.Upadhyaya v. State of Gujarat reported in 39(3) GLR 2264 was cited to point out that the government had taken up a stand in that case that it had a power to regularise the service by resorting to Rule 16 of the General Rules of 1967. In that case, it was urged on behalf of the state Government that the Court may take humanitarian and sympathetic approach and keeping in view the long services of the respondent, it may not interfere in the matter. The learned Single Judge, however, negatived this contention by holding that the requirement of "interest of public services" was altogether missing in the case and, exfacie, it was a simple and plain resort to exercise of power under Rule 16 of the Rules of 1967 for the purpose other than the interest of public services.

[t] Decision of the Supreme Court in N.S.K. Nayar v. Union of India, reported in 1991 (6) SLR 155 was cited to point out that it was held, in context of Rule 27(b) of the Telegraph Engineering Services (Class I) Rules, 1965, that the object of the Rule was to provide a source of appointment to meet an administrative exigency of short tenure and it could never be the intention of the framers of the rule to permit the appointments thereunder to go on for 10 to 15 years. It was held that the appointments for such a long period cannot be considered to be purely temporary or officiating. In paragraph 7 of the judgement, it was held that, while doing

justice to the petitioners, the Court did not wish to cause any prejudice to the direct recruits. It was held that the promotee officers who had worked in STS for a continuous period of five years and were holding the posts, shall be deemed to be regular members of Group "A" service in STS.

[u] Decision in Shanti Devi v. The State of Haryana, reported in 1988 (1) SLR 483 (P&H), was cited to point out that, in a case where the ad hoc appointees held the posts for sufficiently long period, it was held that they formed a separate class, and that the power of relaxing the rule were validly exercised in their favour.

[v] Decision of the Supreme Court in Surya Narain Yadav v. Bihar State Electricity Board, reported in 1985 (2) SLR 479 was cited to point out that, where trainee engineers of State Electricity Board were initially appointed on probation but temptation of being absorbed permanently was given from time to time, and they continued to work since long, the Supreme Court in paragraph 8 of the judgement held that the Board was bound to regularise the appointments of the appellants who had been taken as trainee engineers initially and had continued to be in the employment of the Board.

[w] Decision in J.J.Muralidhara Rao v. The State of Andhra Pradesh, reported 1971(1) SLR 523 (AP) was cited to point out that it was held that the new rules under which the petitioner who had been serving for nearly ten years did not possess qualification, could not have been applied to him as the government was really estopped to say that his services cannot be regularised.

[x] Decision of the Supreme Court in Dr. Ami Lal Bhat v. State of Rajasthan, reported in (1997) 6 SCC 614 was cited to point out that it was held in paragraph 11 that the power of relaxation was required to be exercised in public interest in a given case. The Court upheld the validity of the rules concerned relating to the cut off date being fixed with reference to 1st of January of the year following the rules.

[y] Decision of the Supreme Court in Dr. (Mrs.) Meera Massey v. Dr. S.R.Mehrotra, reported in

(1998) 2 SLJ 178 was cited to point out that, while deprecating the situation brought about by the University by deviation from the normal mode of appointment, the Court upheld the appellant's appointment as lecturer.

[z] Decision in V.M.Sikka v. Union of India reported in (1986) 1 SLJ 330 was cited for pointing out that, in paragraph 5 of the judgement, it was held that the vacancy which occurred prior to the amended rules would be governed by the old rules and not by the amended rules.

[z-1] Decision of the Supreme Court in Chandraprakash Madhavrao Dadwa v. Union of India, reported in (1998) 8 SCC 154 was cited for the proposition that additional qualifications and job requirements could be applied prospectively only.

8. The learned Advocate General contended that there was never any assurance given by the appointing authority that the ad hoc lecturers will be regularised or made permanent. They were appointed only by way of a stop-gap local arrangement till the availability of direct recruits through the PSC. There can be no estopple against statutory rules on the basis of negotiations reflected in the minutes on which reliance is sought to be placed. It was stated that no order was made on the basis of such minutes under Article 166 of the Constitution and therefore, no decision which could be implemented, was taken. It was then contended that the procedure of regular recruitment through the PSC was never followed in respect of these ad hoc lecturers and there was no decision made to relax the recruitment rules or the general rules while appointing these ad hoc lecturers or while continuing them thereafter on ad hoc basis. It was submitted that it is only because of the interim orders which were obtained by the ad hoc lecturers for being continued until the availability of the GPSC candidates that they came to be continued as ad hoc employees for a long period, which cannot create any equity in their favour or against the Government. It was also contended that the recruitment rules for the post in question were being reviewed and therefore, the process of recruitment could not start. In this regard, he referred to the correspondence between the GPSC and the State Government, copies of which were placed on record. It was then contended that the requirements of consultation was not dispensed with and the Government could have made ad hoc appointments only for one year,

and therefore, according to him, there was a lapse on the part of the State Government in not consulting the GPSC before continuing such ad hoc appointees for more than one year, as was required to be done under the rules and regulations. He, however, argued that this did not give any right to such ad hoc lecturers to continue in the post, notwithstanding the availability of the GPSC candidates. It was contended that the Government cannot legitimately continue these ad hoc lecturers without consultative process with the PSC and contrary to the rules, and they have to be replaced by the regular GPSC selectees. It was also argued that there was neither any regularisation, nor any deemed regularisation or deemed relaxation took place, and that, no mandamus could be issued for regularising these ad hoc lecturers in contravention of the recruitment rules. Such ad hoc lecturers could be continued only in that ad hoc capacity till the availability of the regular recruits or till they get regularly appointed. The Government can, at best, consider only relaxing of age limit in consonance with the recruitment rules and the general rules for allowing them chances to compete as may be permissible as per the rules. It was also submitted that many of the appellants had withdrawn their earlier petitions and filed fresh petitions on the same cause of action, though no liberty was reserved when the Letters Patent Appeals were disposed of, on withdrawal of those petitions. Explaining the different stands taken in the affidavits filed on behalf of the State Government, the learned Advocate General contended that, though initially on the representations of the ad hoc lecturers, meetings were held and it was thought of trying to continue them by making a reference to the GPSC, that decision came to be changed in view of the directions given in paragraph 15(ii) by the Court on 9th March 2001 in Special Civil Application No. 2843 of 1991 and cognate matters, and also on a comprehensive consideration of the representations of the ad hoc employees as well as the rules and regulations applicable to the post and the Constitutional provisions.

8.1 The learned counsel who appeared for the direct recruits, who are respondents in Letters Patent Appeal No. 485 of 2002, adopted the contentions raised by the learned Advocate General, pointing out that the appointment orders of all the direct recruits have already been issued.

8.2 The learned Advocate General, in support of his arguments, referred to the following decisions :

[a] Decision of the Supreme Court in Commissioner, Assam State Housing v. Purna Chandra Bora, reported in (1998) 6 SCC 619 was cited for the proposition that the out-going temporary appointee cannot challenge regular appointments to benefit himself. In that case, the first respondent was appointed temporarily and until appointment of Accounts Assistant was made on a regular basis, and he was discharged from service on the day on which five persons were appointed after selection.

[b] Decision of the Supreme Court in State of M.P. v. Dharam Bir, reported in (1998) 6 SCC 165 was cited for the proposition that when the post was not filled up on a regular basis in accordance with the Rules, it could be treated by the State to be vacant. The Court held that whether a person holds a particular post in a substantive capacity or is only temporary or ad hoc is a question which directly relates to his status. It all depends upon the terms of appointemnt. It is not open to any government employee to claim automatic alteration of status unless that result is specifically envisaged by some provision in the statutory rules. Unless, therefore, there is a provision in the statutory rules for alteration of status in a particular situation, it is not open to any government employee to claim a status different than that which was conferred upon him at the initial or any subsequent stage of service.

[c] Decision of the Supreme Court in Keshav Narayan Gupta v. Jila Parishad, Shivpuri (MP), reported in (1998) 9 SCC 78 was cited to point out that, in a case where the approval of the Collector was not obtained in terms of resolution for regular appointment, and where no applications were invited for the post and initially only temperory appointments for limited period were sanctioned by the Collector, it was held that it would be difficult to consider such appointments as regular.

[d] Decision of the Supreme Court in State of Orissa v. Dr. Pyari Mohan Misra, reported in AIR 1995 SC 974 was cited to point out that, in paragraph 4 of the judgement, it was held that mere prolonged continuous ad hoc service does not

ripen into a regular service to claim permanent or substantive status. Such appointee shall remain on ad hoc basis until further orders.

[e] Decision of the Supreme Court in Dr.Surinder Singh Jamwal v. State of Jammu & Kashmir, reported in AIR 1996 SC 2775 was cited to point out that, it was held by the Supreme Court following its earlier decision in J. & K. Public Service Commission v. Dr. Narinder Mohan, reported in (1994) 2 SCC 630, that under the Rules, the regular recruitment to the posts shall be made by the Public Service Commission and consequently, the ad hoc appointments would be only temporary appointments dehors the Rules, pending regular recruitment without conferring any right to regularisation of service.

[f] Decision of the Supreme Court in E. Ramakrishnan v. State of Kerala, reported in (1996) 10 SCC 565 was cited to point out that the Court, rejecting the contention canvassed on the basis of Piara Singh's case that in view of the fact that the petitioners had been continued for more than 14 years, they were required to be regularised on the ground that the posts were to be filled up through selection by the PSC Recruitment Norms, and therefore, the candidates who were found eligible and selected and recommended for appointment by the PSC, were required to be appointed. In paragraph 3 of the judgement, it was held that the Government cannot take any decision contrary to the Constitution to regularise the services of the candidates dehors the recruitemnt rules and the statutory process for selection through the PSC, in view of the provisions of Article 320 of the Constitution.

[g] Decision in case of J & K Public Service Commission v. Dr. Narinder Mohan, reported in AIR 1994 SC 1808, was cited for the proposition that the executive power under Article 162 of the Constitution could be exercised only to fill in the gaps but such instructions cannot and should not supplant the law, but would only supplement the law. It was held that, having made the rules governing recruitment, the executive cannot fall back upon its general power under Article 162 to regularise the ad hoc appointments under the Rules. It was held that the Rule 9(3) of the J & K Medical Education (Gazeted) Services

Recruitemtn Rules (1979), empowered only to relax the qualification of age in particular exigencies which cannot be called in aid to relax the rules of recruitment. It was held that the Government had no power to make regular appointment under the Rules without selection by the Public service commission under Article 133(1) of the J. & K. Constitution.

[h] Decision of the Supreme Court in Dr.M.A.Haque v. Union of India, reproted in (1993) 2 SCC 213 was cited to point out that, in paragraph 9 of the judgement, the Supreme Court held that, we cannot lose sight of the fact that the recruitment rules made under Article 309 of the Constitution have to be followed strictly and not in breach. If a disregard of the rules and the by-passing of the Public Service Commissions are permitted, it will open a back-door for illegal recruitment without limit. The Supreme Court noted that, of late, it had witnessed a constant violation of the recruitment rules and a scant respect for the constitutional provisions requiring recruitment to the services through the Public Service Commissions. It was observed;

> "It appears that since this Court has in some case permitted regularisation of the irregularly recruited employees, some governments and authorities have been increasingly resorting to irregular recruitments. The result has been that the recruitment rules and the Public Service Commissions have been kept in cold storage and candidates dictated by various considerations are being recruited as a matter of course."

[i] Decision of the Supreme Court in Dr.(Mrs.) Meera Massey v. Dr. S.R.Mehrotra, reported in AIR 1998 SC 1153 was cited for the proposition that selection of teacher has not to be on minimum eligibility but best available from a larger sphere. The Court observed that the selection of teacher is not to be done from the sphere of ad hoc or stop-gap appointees. Such course will damage the standard of the University.

[j] Decision of the Supreme Court in Dr. Arundhati Ajit Pargaonkar v. State of Maharashtra reported

in AIR 1995 SC 962 was cited to point out that, in paragraph 7 of the judgement, the Supreme Court observed that the claim of the appellant, that she having worked as lecturer without break for nine years on the date the advertisement was issued, she should be deemed to have been regularised, did not apepar to be well founded. It was held that eligibility and continuous working for howsoever long period should not be permitted to over-reach the law, and that requirement of rules of selection through the Public Service Commission cannot be substituted by humane consideration. It was held that law must take its course and consequently the appellant was not entitled to claim that she should have been deemed to have been regularised as she had been working without break for nine years.

[k] Decision of the Supreme Court in Santosh Kumar Verma v. State of Bihar, reported in AIR 1997 SC 975 was cited for the proposition that the mandamus cannot be issued to regularise the services made in contravention of law. In that case, the appointments of the appellants were for a temperory tenure and they had sought for regularisation, which was negatived by the Public Service Commission. The posts were within the purview of the Public Service Commission and therefore, the Government had sought the concurrence of the Public Service Commission and the Public Service Commission had not concurred. It was held that the Commission rightly did not concur with the request made by the Governemnt and therefore, any regularisation in violation of the recruitment to be made by the Public Service Commission was in contravention of the law.

[l] Decision of the Supreme Court in The Commissioner, Corporation of Madras v. Madras Corporation Teachers' Mandram, reported in AIR 1997 SC 2131 was cited for the proposition that the creation of post or prescribing qualification for post was a matter of executive policy of the Government, and that the Administrative Tribunal cannot give directions for creation of post or to prescribe minimum qualifications for the post.

[m] Decision of a Division Bench of this Court in Bhartiben Nanubhai Balsara v. State of Gujarat, reported in XXX(1) GLR 659 was cited for the

proposition that, any appointment to any post dehors the Rules or without being selected as per statutory Rules should be held as irregular and invalid, and that the irregularly appointed employees cannot assert right to hold the post or continue in service.

[n] Decision of the learned Single Judge of this Court in case of Maisuria Mahendra Bhagwandas v. State of Gujarat, reported in XXXI (2) GLR 719 was cited for the proposition that when the appointments were made purely on temporary and ad hoc basis, with a specific condition that such appointees will have to vacate the post, on availability of the GPSC selectees, it was not open for such appointees to make any grievance against their termination on the availability of the GPSC selectees.

[o] Decision of this Court in Mukesh B. Desai v. State of Gujarat, reported in 1997 (3) GCD 645 was cited to point out that, where the appointment order clearly stipulated that the ad hoc appointment of the appellant was till a candidate was regularly selected by the GPSC or for a period of 11 months, whichever was earlier, it was held that, assuming that he was allowed to continue even after the period of 11 months had expired, that would still not give any right to such an ad hoc appointee to ask for a writ of mandamus, which would, in effect, allow him to continue in service, even though his appointment would be contrary to his own appointment order.

[p] Decision of the Supreme Court in State of Haryana v. Piara Singh, reported in AIR 1992 SC 2130 was cited to point out the problems that according to the Apex Court would arise if blanket directions are issued for regularising the ad hoc or temporary employees. The Supreme Court held that, in the event of such directions being given, there would be no post left for regularly selected persons even if they are selected. Moreover, two persons cannot hold the same post on a regular or permanent basis. If such ad hoc employee is to be regularised, it would not only mean foreclosing appointment of a regular qualified person, it would also mean appointment of an unqualified person. It was also held that issuing general declaration of indulgence was not part of Court's jurisdiction. It is further held

it is for the respective Governments to consider the feasibility of giving them appropriate relief, particularly in cases where persons have been continuing over a long number of years, and were eligible and qualified on the date of their ad hoc appointment and further whose record of service was satisfactory. The Supreme Court also held that the appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc / temporary employee. The Supreme Court also observed that the persons continuing in service over a number of years have a right to claim regularisation and the authorities were under an obligation to consider their case for regularisation in a fair manner, and that the proper course would be that each State prepares a scheme, if one is not already in vogue, for regularisation of such employees consistent with its reservation policy, and if a scheme is already framed, the same may be made consistent with the observations made in the judgement so as to reduce avoidable litigation. It was observed that each government or authority has to devise its own criteria or principles for regularisation having regard to all the relevant circumstances, keeping in view the observations made in the judgement.

[q] Decision of the Supreme Court in P. Ravindran v. Union Territory of Pondicherry, reported in (1997) 1 SCC 350 was cited for the proposition that the Public Service Commission having been entrusted with the Constitutional duty to select suitable candidates by inviting applications from the open market, every candidate has a fundamental right to seek consideration and for selection through open competition. It was held that the process of recruitment through the Commission as envisaged under the Cosntitution cannot be bypassed by issuing directions for regularisation of services of the ad hoc persons who had come to services through back-door entry.

[r] Decision of the Supreme Court in Keshav Chandra Joshi v. Union of India, reported in 1992 Supp. (1) SCC 272 was cited to point out that, in paragraph 24 of the judgement, it was held that ad hoc or fortuitous appointments on a temporary or a stop-gap basis cannot be taken into account for the purpose of seniority, even if the

appointee was subsequently qualified to hold the post on a regular basis. It was observed that, in order do justice to the promotees, it would not be proper to do injustice to the direct recruits. The ratio of direct recruits case {(1990) 2 SCC 715] was culled out in paragraph 25 of the judgement, as per which, where the initial appointment was only ad hoc and not according to rules and made as stop-gap arrangement, the officiation in such posts cannot be taken into account for considering the seniority.

[s] Decision in State of West Bengal v. Aghore Nath Dey, reported in J.T. 1993 (2) SC 598 was cited to point out that, in paragraph 20 of the judgement, it was held that, Narendra Chadha's case cannot be construed to apply to cases where the initial appointment was not according to rules.

[t] Decision of the Supreme Court in Dinkar Anna Patil v. State of Maharashtra, reported in AIR 1999 SC 152 was cited to point out that, in paragraph 17 of the judgement, in context of the Rules framed by the Government of Maharashtra under Article 309 of the Constitution, it was held by the Supreme Court that, it would give unbridled power to the government to dispense with the consultation with the Maharashtra Public Service Commission, if the word "may" used in Rule 4 was held to be directory and it would render the very object of consultation with the MPSC, whereever necessary, nugatory. The Supreme Court held that the word "may" must mean "shall" and therefore, consultation was mandatory. The Supreme Court followed the decision in Keshavchandra Joshi v. Union of India, reported in 1992 Supp. (1) SCC 272, in which, dealing with the interpretation of Rule 27 of U.P. Forest Service Rules, 1952, the Court construed the word "may" used in Rule 27. It was held that the word "may" has to be read as "shall" and therefore, consultation was mandatory.

[u] Decision of the Supreme Court in M/s Upadhyaya & Co. v. State of U.P., reported in AIR 1999 SC 509 was cited for the proposition that when the party had withdrawn the Special Leave Petition filed to challenge the order of the High Court in writ petition without seeking permission to file fresh SLP, he cannot file another SLP challenging

the same order again.

[v] Decision of the Supreme Court in Executive Officer, Arthanareswarar Temple v. R.Sathya Moorthy, reported in AIR 1999 SC 958 was cited to point out that, in paragraph 14 of the judgement, it was held that, if an appeal was preferred by an unsuccessful plaintiff against the judgement of the trial Court dismissing the suit and if the plaintiff appellant wanted to withdraw not only the appeal but also the suit unconditionally, then such a permission so far as the withdrawal of the suit concerned can be granted if there was no question of any adjudication on merits in favour of the defendants by the trial being nullified by such withdrawal.

[w] Decision of the Supreme Court in State of Maharashtra v. Sanjay Thakre, reported in 1995 Supp. (2) 407 was cited for the proposition that appointment of promotees in excess of quota was violative of Rules and could not count for the purpose of seniority.

[x] Decision in Dinkar Patil v. State of Maharashtra, reported in J.T. 1998 (7) SC 513 was cited for the proposition that placement of direct recruits vis-a-vis the promotees will have to be determined on the basis of date of regularisation and excluding the period of fortuitous appointments.

[y] Decision of the Supreme Court in The Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra, reported in AIR 1990 SC 1607 was cited for the proposition that, where the initial appointment is only ad hoc and not according to the rules and made as a stop-gap arragement, the officiation in such post cannot be taken into account for considering the seniority. (See paragraph 44 of the judgement).

[z] Decision of the Supreme Court in U.P. Secretariat U.D.A. Association v. State of U.P., reported in (1999) 1 SCC 278 was cited for the proposition that, merely because temporary appointment or promotion is made, seniority cannot be counted from the date of officiation except when the appointemnt was made in accordance with rules.

[aa] Decision of the Supreme Court in Maharashtra Vikrikar Karamchari Sangathan v. State of Maharashtra, reported in (2000)2 SCC 552, was cited to point out that, where it was contended on behalf of the appellants that some of them had put in more than 17 years of service, when a few of direct recruits were either schooling and / or not born in the cadre, and that if the appellants were pushed down, it would cause great hardship to them, the Supreme Court, in paragraph 26 of the judgement, negatived that contention on the ground that, if there is a patent violation of the quota rule, the result must follow and the appellants who remained in the office for all these years cannot take the advantage of such situation.

[bb] Decision of the Supreme Court in State of Kerala v. A.Laxmikutty reported in AIR 1987 SC 331 was cited for the proposition that the High Court could not issue a writ of mandamus directing the State Government to appoint person recommended by the High Court as District Judge.

[cc] Decision of the Supreme Court in Sarguja Transport Service v. State Transport Appellate Tribunal, reported in AIR 1987 SC 88 was cited for the proposition that a petitioner after withdrawing a writ petition filed by him in the High Court under Article 226 without the permission to institute a fresh writ petition cannot file a fresh writ petition in respect of the same cause of action in the High Court. (See para 9 of the judgement).

[dd] Decision of the Supreme Court in State of Bihar v. Kripalu Shanker, reported in AIR 1987 SC 1554 was cited for the proposition to the effect that, an opinion becomes a decision of the Government only when it must be communicated to the person concerned, and that notings in a "notes file", not only of officers but even that of a minister will not constitute an order to affect others unless it is done in accordance with Articles 166(1) & (2) and communicated to the person concerned. (See para 18 of the judgement).

9. The entire controversy centres around the issue whether the ad hoc lecturers who were locally appointed until regular Public Service Commission candidates were available and were continued as ad hoc without

consultation with the Public Service Commission and dehors the recruitment rules, should be deemed to have been or should be regularized in the post by virtue of their having been continued for long years, notwithstanding the availability of the Public Service Commission selectees.

10. Public Service Commissions are constitutional entities created by Article 315(1) of the Constitution of India. The provisions of Chapter II of Part XIV of the Constitution dealing with Public Service Commissions indicate the importance that the Constitution seeks to attach to the independence and the utility of the Public Service Commissions in the realm of the services under the Union and the States.

11. The principal function of the Public Service Commissions is to conduct examinations for appointment to Union and State Services as provided by Article 320(1) of the Constitution. Article 320(3), inter alia, provides that the Public Service Commissions shall be consulted, (a) on all matters relating to methods of recruitment to civil services and for civil posts, and (b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers. Proviso to clause (3) of Article 320 empowers, inter alia, the Governor as respects services and posts in connections with the affairs of the State, to make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted. Under clause (5) of Article 320, such regulations made under the proviso to clause (3) are required to be laid before the Legislature of the State. It is thus left to the State concerned to specify, by such regulations, the matters in which it shall not be necessary to consult the Public Service Commission.

11.1 The Government of Gujarat, in exercise of the powers conferred by the proviso to clause (3) of Article 320 of the Constitution, made the Gujarat Public Service Commission (Exemption from Consultation) Regulations, 1960. As per Regulation 3 thereof, it shall not be necessary to consult the Gujarat Public Service Commission in any of the matters specified in paragraphs (a) and (b) of clause (3) of Article 320 of the Constitution in respect of the posts which are specified in the Schedule to these Regulations and temporary

appointments to all other posts and services for a period not exceeding or not likely to exceed one year. However, if such temporary appointment involves any relaxation of the recruitment rules which are finalised in consultation with the Commission, it is necessary to consult the Public Service Commission, as mentioned below the said Regulation 3. The service and its posts in the cadre of Lecturer, Gujarat Education Service, Class II (Collegiate Branch), admittedly are not exempted from the purview of the Public Service Commission under the said regulations.

11.2 The Governor of Gujarat, in exercise of the powers conferred by the proviso to Article 309 of the Constitution, made the Gujarat Civil Services Qualifications & Recruitment (General) Rules, 1967, which apply to services and posts the recruitment to which is regulated in accordance with the Rules made under Article 309 of the Constitution as laid down by sub-rule (3) of Rule 1 of the Rules. The posts of Lecturers in the Government colleges in the State are admittedly Class II civil posts.

11.3 An appointment to any service or post included in the State service shall be made by the State Government or by any authority duly empowered in that behalf by the State Government either on the result of a competitive examination held for the purpose, or by direct selection or by promotion or by transfer from amongst the persons satisfying the conditions prescribed in these General Rules and other Rules, if any, relating to the recruitment to such service or post, as laid down under Rule 9(1) of the General Rules. Under sub-rule (2) of Rule 9, every such appointment shall be made after consultation with the Gujarat Public Service Commission, unless under a regulation made under the proviso to clause (3) of Article 320 of the Constitution, such consultation is not necessary.

11.4 In exercise of the powers conferred by the proviso to Article 309 of the Constitution, the Governor of Gujarat made rules for regulation of recruitment to the post of the Lecturers in the Government Arts, Science and Commerce Colleges in the Gujarat Educational Services, Class II (Collegiate Branch) called the "Lecturers in the Government Arts, Science and Commerce Colleges Recruitment Rules, 1980". By Rule 2, it is provided that the appointment to the post of Lecturers in such colleges in Gujarat Educational Services, Class II (Collegiate Branch) shall be made by direct selection. Rule 3 of the Recruitment Rules laid down the eligibility for appointment by direct selection to the said posts.

If the Gujarat Public Service Commission was of the view that the research work of a candidate as evident either from his thesis or from his published work was of a very high standard, it may relax the qualifications prescribed in clause (b) of rule 3 so far as it related to class at the Master's Degree, under the first proviso to rule 3. If a candidate possessing the qualifications prescribed under clause (c) of Rule 3 is not available or not considered suitable, the Gujarat Public Service Commission may recommend person possessing qualifications of clause (b), with consistently good academic record i.e. overall record of all assessments throughout the academic career leading to Master's Degree on condition that he will have to obtain a Master of Philosophy degree level, within five years of his appointment, failing which he shall not be eligible to earn future increment till he obtains that degree or produces evidence of equivalent published work of a high standard, as laid down in the second proviso to Rule 3 of the Recruitment Rules. The General Rules would apply, by virtue of Rule 1(3) thereof, to Gujarat Educational Services, Class II, (Collegiate Branch), the recruitment to which is regulated as per the said Rules of 1980 made by the Governor under the proviso to Article 309 of the Constitution.

11.5 It will thus be seen that the mode prescribed for recruitment to the post of lecturers in GES, Class II (Collegiate Branch), is by appointment by direct selection and no other mode is envisaged by the recruitment rules governing such appointment. The recruitment rules clearly contemplate that the selection will be made by the Gujarat Public Service Commission. This is evident from the aforesaid two provisos of Rule 3 of the Recruitment Rules, which empowered the GPSC to relax certain qualifications. Rule 9(2) of the General Rules of 1967 requires such appointment to be made after consultation with the Gujarat Public Service Commission, because, admittedly, there is no regulation made under the proviso to clause (3) of Article 320 of the Constitution, dispensing with the process of consultation so far as these posts are concerned. Both the General Rules and the Recruitment Rules have the force of law having binding effect on all concerned. Once the Governor frames the Rules under the proviso to Article 309, the action of the State Government in respect of the matters covered by the Rules should be regulated by such Rules. The Rules framed under the proviso to Article 309 of the Constitution are solemn rules having binding effect. In A.K.Bhatnagar v. Union of India, reported in (1991) 1 SCC 544, the Supreme Court cautioned against

flouting of such rules by observing that acting in a manner contrary to the Rules creates problem and dislocation and that very often the government themselves get trapped on account of their own mistakes or acts in excess of what is provided in the rules, and held that the Government, both at the Centre and in the State, should take note of this position and refrain from acting in a manner not contemplated by their own rules.

11.6 The Rules made under the proviso to Article 309 regulating the recruitment and conditions of services of persons appointed to such services or posts will operate with full force, subject to the provisions of the Constitution or any Act made by the appropriate Legislature, as contemplated by Article 309. Apart from this limitation and in the absence of any Act of the appropriate Legislature on the matter, the Rules will have full effect and must be enforced. In the present case, the recruitment rules for the post of Lecturer, GES, Class II (Collegiate Branch) stipulate only one mode of recruitment i.e. of "direct selection" from amongst the modes available under Rule 9(1) of the General Rules. Rule 9(2) of the General Rules framed under Article 309 of the Constitution require, as noted above, that, every such appointment shall be made after consultation with the Public Service Commission unless under a regulation made under proviso to clause (3) of Article 320, such consultation is not necessary. It would, therefore, follow that there can be no relaxation of the basic or fundamental rules of recruitment which prescribed direct selection through the Public Service Commission as the only mode of recruitment to the post for which the recruitment rules are framed under Article 309. Mere executive instructions under Article 162 read with Article 166 cannot supercede the recruitment rules made under the proviso to Article 309 which have the force of law. Since there is no option left with the government under the Lecturers, GES, Class II Rules 1980, to adopt any mode other than of direct selection for appointment to the post, will fly in the face of the recruitment rules and cannot be validly recognised. In fact, regularisation cannot be said to be a mode of recruitment. [See R.N.Nanjundappa v. Thimmiah, reported in (1972) 1 SCC 409].

11.7 The power of regularisation, in absence of any provisions in the Act or Rules made under Article 309, would be referable to the executive power under Article 162 and not to the legislative or rule making power under Article 309. Therefore, when the field is occupied by law which expression will include rules having force of

law, there would be no scope for exercising executive power in a manner that would be in conflict with such law. In the present case, there was no attempt made by the State Government to absorb the ad hoc appointees by making any regularisation or absorption rules having force of law. The process of recruitment of Lecturers, GES, Class II (Collegiate Branch) by way of direct selection through the PSC which was undertaken, as per the recruitment rules, cannot, therefore, be halted. In fact, the appointment orders of such 342 direct recruits who were selected are already issued (132 orders were issued on 10th November 2001 and 210 on 9th October 2002, of which 123 are awaiting posting, as stated by the learned Advocate General). As held by the Supreme Court in Piyara Singh's case (supra), the appointment of the regularly selected candidates cannot be withheld or kept in abeyance for the sake of the ad hoc / temporary employees. In the present case, the ad hoc employees are being replaced by the regularly selected employees and therefore, the appellants cannot make any grievance against such replacement which was contemplated by the very nature of their ad hoc appointments, which temporary status never was altered.

12. It was sought to be urged on behalf of the appellants that the appointments of the appellants should be treated as regular, because, they were having the requisite educational qualifications when selected as per the policy of local recruitment by a committee prescribed by the government orders, dated 21st December 1992. The circular dated 21st December 1992, which is on record, shows that the instructions were issued by the office of the Commissioner of Higher Education as regards the procedure to be followed for local appointments in the government colleges. It was, inter alia, mentioned therein that there would be a Selection Committee for taking interview of the candidates for the purpose of such local appointments on ad hoc basis comprising Joint Director of Higher Education or an officer of the rank of Joint / Deputy Director authorised by the Joint Director of Higher Education, who would be the Chairman, the Principal of the concerned college, the senior most lecturer of that college, and an expert in the subject concerned, to be appointed from the panel of senior lecturers prepared for the purpose. It was further provided that, there should be at least three members present in the Committee for discharge of its functions, and that if the Chairman was not able to remain present, the Principal of the College would function as a Chairman. If the senior most lecturer who was the member did not remain present, then it was left to the Principal

to call another senior lecturer of the same college. In the same way, if the expert member who was lecturer from the panel was not able to remain present for taking the interview, it was left to the Principal to call the lecturer teaching the subject concerned in the concerned college itself. Marks were to be allotted from 25 marks by each of the four members individually, and a merit list was to be prepared on the basis of such allotment of marks. The circular also provided for open interview. In paragraph 11 of the circular, it was stated that, ordinarily, the lecturers were to be selected through the Gujarat Public Service Commission only on permanent basis. However, as an exception, the ad hoc temporary appointments were made as per the above procedure. If it is not possible to make local appointments in the above manner, in some special circumstances, local appointments could be made after prior permission by adopting the method of open interview. It is clear to us that the local appointments of ad hoc lecturer by way of stop-gap arrangement as per the procedure prescribed by the said circular was not intended to prescribe any alternate mode of regular appointment to the cadre of Lecturers, GES, Class II Services, but by their very nature, such appointments were subject to the availability of the regular recruits. The conditions of local appointments provided that the ad hoc appointees would be relieved as soon as the PSC candidate or a transferee reported for the post. This is clear from the condition No.7 of the conditions of local appointments, which are placed on record along with the said circular. In the appointment orders, admittedly, it was specifically mentioned that the appointment of these persons was purely on ad hoc basis and they would have no right to the post of lecturer. It was specifically stated in these orders that, on the availability of the regular candidate through the Public Service Commission or by transfer of lecturers, the ad hoc employee will have to be replaced. In cases of those who were appointed keeping their lien in Class III posts in the Government schools, they were required to be reverted and in other cases where there was no such lien, the ad hoc recruits were to be relieved. There is no dispute over the fact that the appointments of all these appellants were made purely on ad hoc basis, with a clear stipulation that they were to be relieved on the availability of the GPSC candidate.

13. Selection by way of local arrangement for a stop-gap appointment of lecturer by local committee in which the college concerned had a major voice by virtue of its principal and senior most lecturer being the member of the Committee, of which quorum was three, can

hardly be compared with the selection by the Gujarat Public Service commission, which is a constitutional body, for regular appointment to the post in the cadre of Lecturers, Gujarat Education Service, Class II, as per the recruitment rules. The purpose of such recruitment is aimed at securing the best available talent for the teaching post. There is nothing common between such local committees and the GPSC. The functions of the PSC are meant to ensure that vacancies are filled by deserving and capable hands and are not filled either by the relatives or friends or flatterers. Though the powers of the PSC are advisory in character, it is required to be consulted, as provided by clause (3) of Article 320 of the Constitution, unless such consultation is dispensed with by a regulation made under the proviso to clause (3) in respect of the specified matters or particular class of case or circumstance. The Commission having been entrusted with the constitutional duty to select suitable candidates by inviting applications from the open market, every eligible candidate will have a fundamental right to seek consideration for selection through open competition (See P. Ravindran v. Union Territory of Pondichery, reported in (1997) 1 SCC 350).

13.1 The fact that there is no provision in the Constitution which makes the acceptance of the advice tendered by the PSC, when consulted, obligatory renders the provision of Article 320(3) directory, and not mandatory, but that does not amount to saying that it is open to the executive government completely to ignore the existence of the Commission or to pick and choose cases in which it may or may not be consulted. The proviso to clause (3) of Article 320 clearly envisaged framing of regulations which are to be led before the Legislature, if at all the process of consultation is to be dispensed with in matters which are to be specified. Once such regulations have been made, they are meant to be followed in letter and spirit. It would not be open to the executive government to bypass the process of recruitment through open competition to be held by the PSC in services which fall within its purview under Article 320 of the Constitution.

14. After having the experience of working of the Government of India Act, 1935, which, in section 266, provided for functions of the Federal and Provincial Public Service Commissions, the defects that were noticed in practice were sought to be remedied in Article 320 (embryonic form of which was Article 286 in the Constituent Assembly Debates), by seeing to it that the regulations exempting certain things from the scope and

jurisdiction of the PSC have to be placed before the Parliament or Legislature, as the case may be, for its scrutiny from time to time. Article 320 provides a check, and indeed a very good check, on the vagaries of the Executive by providing that the regulations specifying matters in regard to which it will not be necessary to take the advice of the PSC, are laid before the Legislature and the Legislature will have the power not merely to criticize such regulations, but to amend them in any manner that it likes. This would ensure that no regulations would operate unless the Legislature approves them. Furthermore, by Article 323(2) of the Constitution, the State Public Service Commission has been enjoined with a duty to present annually a report of its work to the Executive and the Governor is required, on receipt of such report, to cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted and the reasons for such non-acceptance, to be laid before the Legislature of the State. Thus, should the Executive be tempted unduly to disregard the advice of the PSC, the representatives of the people will have an opportunity of scrutinizing such action of the Executive and preventing the Executive, in future, from disregarding the considered advice of the Commission. With the checks provided in these Articles, there is a reasonable certainty that the Executive will be disposed to act with caution and not to exercise its powers in an arbitrary fashion and act as if the Public Service Commission did not exist.

14.1 It will not be out of place here to remind ourselves that, on 26th November 1949, while adopting the Constitution, the President Dr. Rajendra Prasad, while pointing out the salient features of the Constitution, inter alia, observed;

> "Our Constitution has devised certain independent agencies to deal with particular matters. Thus, it has provided for Public Service Commissions, both for the Union and for the States and placed such Commission on an independent footing so that they may discharge their duties and without being influenced by the Executive. One of the things against which we have to guard is that there should be no room as far as it is humanly possible for jobbery, nepotism and favouritism. I think the provisions which we have introduced in our Constitution will be very helpful in this direction."

15. It would follow from the nature of the functions of the Public Service Commission that, being associated with all matters relating to methods of recruitment to civil services and for civil posts and on the principles to be followed in making appointments, promotions and transfers, as also with the suitability of candidates for such appointments, promotions or transfers, the PSC is under a constitutional obligation to exercise its powers to be consulted in all matters in which it is required to be consulted and the Executive is under the constitutional obligation to consult it in all matters which are not specifically excluded by the regulations made under the proviso to clause (3) of Article 320. Deliberate and consistent failure on the part of the Executive to consult the PSC in matters in which it is constitutionally obliged to consult, notwithstanding the advice may not be binding on it, would bring about a situation in which it would appear that the governance of the State is not carried on in accordance with the provisions of the Constitution, by on one hand paralysing a constitutional body like the PSC from functioning and on the other, short circuiting the provisions which require regulations under the proviso to clause (3) to Article 320 to be framed and to be laid before the Legislature which can modify them, for deciding in which specified matters, consultation with the PSC is to be dispensed with. The power of the Legislature in context of such regulations cannot be scuttled by the Executive by going beyond the regulations which specify the matters for which it is not necessary to consult, by refraining from consultation as regards the matters not so covered by such regulations. The PSC is under a Constitutional obligation to send annual report which has to be laid before the Legislature under Article 323 and in such report, it would be obligatory on its part to report about any deliberate inaction on the part of the Executive Government to consult the PSC in respect of the matters in which it is required to be consulted in the absence of the regulations under the proviso to clause (3) of Article 320, and point out the fact that it could not do its work due to such inaction, deliberate or negligent or because of reckless indifference, on the part of the State Government so that the Legislature can notice the breach of the constitutional requirement of consultation from such report and take necessary action expected of it.

16. As noticed above, consultation with the Commission in any of the matters specified in paragraphs (a) and (b) of clause (3) of Article 320 is not necessary

in respect of the posts specified in the Schedule to the Exemption from Consultation Rules of 1960 and the post of Lecturer, Gujarat Education Services, Class II, is not included in that Schedule. Such consultation is, however, not necessary in respect of the temporary appointments to all other posts and services for a period not exceeding or not likely to exceed one year as per clause 3(b) of the Regulations of 1960. Thus, no consultation is required when the post is to be filled in for temporary period not likely to exceed one year. This exemption does not authorise the State Government not to consult the PSC in respect of the appointments which are likely to exceed one year. This would mean that, in all such cases, the Government is required to apply its mind and decide before making any temporary appointment whether such appointment is "for a period not exceeding or not likely to exceed" one year. Even in cases where the temporary appointment is not likely to exceed one year, the Government issued circular dated 22nd January 1998 which is mentioned below Regulation 3 of the said Regulations of 1960 that it is necessary to consult the PSC if such temporary appointment involves relaxation of recruitment rules of the post, finalised in consultation with the PSC even in urgent cases. The Circular of 1992 issued by the Government under Article 162 of the Constitution for making local appointments cannot expand the scope of Regulation 3, and enable the Government to make temporary appointments for an indefinite period exceeding one year. It is an unfortunate situation that the GPSC did not worry about the erosion of its power of being consulted by the culpable inaction on the part of the Government to consult it for appointments to the post of Lecturers, Gujarat Education Service, Class II, despite more than 400 vacancies having arisen.

16.1 It was contended on behalf of the PSC that, in absence of getting the requisition from the Government inspite of its reminders, it could not exercise its functions. Correspondence was shown to us reflecting the inaction on the part of the Executive in not consulting the GPSC in respect of these vacancies and the lukewarm attitude of the Executive. The GPSC need not have felt itself helpless in not being able to do its work and could have resorted to appropriate legal proceedings for seeking a remedy against the State Government for compelling it to perform its local obligation to consult the Commission in matters in which it was as per the Rules, Regulations and Constitutional provisions required to be consulted. Such inaction on the part of the GPSC as well as the State Government, which had put the machinery of consultation in context of these posts to

disuse, verges on negligence in performance of the statutory functions, and amounts to a reckless disregard to the consequences of such inaction in breach of statutory duties entrusted to them. Such reckless inaction and breach of statutory duties would obviously be attributable to the individuals who were required to discharge their functions according to the rules, regulations and the constitutional provisions requiring consultation with the GPSC in the matter of such appointments.

16.2 The provisions contained in Article 320 with regard to the matters in respect of which the PSC shall be consulted have been held not to be mandatory, because, it was not stated what would be the consequences of the disregard of these provisions, and, clause (3) warranted exclusion of matters from consultation by the Executive. This would mean that, from the point of view of the public, the obligation laid on the Executive was not an enforceable right but only a directive principle. However, in such a case, the PSC is now able to mention in its report under clause (5) of Article 320 about the matters in which its recommendation was not accepted or where it was not consulted though required to be so consulted and such report will have to be placed before the Legislature. The provisions of clause (5) of Article 302 was clearly enacted to ensure that there would be a reasonable certainty that the Executive will be disposed to act with caution and not exercise its powers in an arbitrary fashion and act as if the Public Service Commissions did not exist. If the Executive or the personnel of the Commission do not discharge their duty properly and without fear or favour, then they demean these welcome constitutional provisions. After all, the Constitution cannot either create competent men or compel the Executive to choose the officers required to discharge important functions with care and impartiality.

17. It was argued that, from the continuance of the ad hoc appointees for long period, it should be inferred that the recruitment rules were relaxed in their favour and they are deemed to have been regularised. The appointments of the appellants and the like were mere local appointments made dehors the rules and such ad hoc appointments could not have been made for a period exceeding one year, without consulting the Public Service Commission. The posts having not been filled up on regular basis in accordance with the statutory rules were required to be treated as vacant for the purpose of undertaking the process of regular recruitment. The terms of appointment of the ad hoc appointees clearly

stipulated that they would be relieved when the PSC candidate or a transferee was available. Such ad hoc status of these appointees did not at any stage alter by any rules or regulations having force of law. The appellants and the like who were appointed in ad hoc capacity, therefore, continued to hold the posts in that capacity only, and there would be no alteration of their status from ad hoc appointees to regular recruits. As held by the Supreme Court in State of M.P. v. Dharam Bir, reported in (1998) 6 SCC 165, it is not open for any government employee to claim automatic alteration of status unless that result is specifically envisaged by some provision in the statutory rules. The exigencies of service often require ad hoc arrangement till the regular selection gets finalised. If the ad hoc employees who continued as ad hoc beyond one year are to be regularised or deemed to have been regularised as argued on their behalf, that would frustrate the very process of selection and appointment as per the mode and procedure prescribed by the statutory rules, and, as would happen in the present case, no posts would be left for the regularly selected persons, because, two persons cannot hold the same post on a regular basis. As held by the Apex Court in Piyara Singh's case (supra), efforts should always be to replace such ad hoc employee by a regularly selected employee as early as possible. Such temporary employee may also compete along with others for such regular selection / appointment and if he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be held in abeyance for the purpose of allowing the ad hoc employee to continue. When the field is covered by the statutory rules laying down the mode of regular appointments, the Courts will not be justified in directing any regularisation which may be dehors the rules. No illegality should be allowed to perpetuate under the Court orders. Therefore, the Court while holding that the regular appointments by direct selection to the post of Lecturers can be made only as per the recruitment rules and the general rules in consultation with the GPSC as contemplated thereunder, cannot, in the same breadth, order that the ad hoc appointees irregularly continuing beyond one year pending the availability of regular GPSC recruits should be treated as regularised due to their prolonged continuance on ad hoc basis. That would amount to asking the government to violate the statutory rules in the context of the ad hoc appointees while professing to uphold and enforce them in context of the direct recruits. Such self-contradictory approach would be a mockery of the legal system. It would be for the State

Government to devise any scheme consistent with the recruitment rules or a validating statutory provision, if at all the ad hoc appointees are to validly hold the post. It is obvious that the State cannot be compelled by the Court to legislate in the matter for making any statutory exception in the recruitment rules or to retrospectively validate by a statutory provision any such ad hoc appointment.

18. It was contended that the theory of precedent did not mean picking up one of the cases decided by the Apex Court and applying its ratio, but it meant taking into account the ratio emerging after the study of all the ratios of different decisions. Such formidable task may evolve some hybrid ratio which may not have been intended by the Apex Court even in its collective wisdom. The proper course is to keep in mind the ratio as it emerges in each case in the background of its facts and the decision rendered and each decision of the Apex Court on its own will constitute a binding precedent.

19. The contention that the direct selectees have no right to claim the appointment even when included in the select list prepared by the PSC and therefore, the learned Single Judge should not have issued directions to appoint them as contained in paragraph 77 of the judgement, is not open to these ad hoc employees. The State Government has not raised any such contention and has, as per the recruitment rules, issued appointment orders of these PSC selectees. The fact that the PSC selectee on the select list cannot claim appointment as a matter of right cannot create any entitlement in favour of the ad hoc employee to continue as ad hoc employee in a post which, as per the statutory rules, can be filled only by direct selection through the PSC. There is also no substance in the grievance made on behalf of the lien holder ad hoc appointees against the directions contained in paragraph 77 of the impugned judgement for applying the principle of "last come first go" to the ad hoc appointees.

20. The contention that some of the ad hoc employees were wrongly not called for interview on the ground that they did not satisfy the educational qualifications prescribed by the recruitment rules which were subsequently amended, is erroneous. Their qualifications were necessarily required to be judged by the provisions of the recruitment rules prevailing at the time of their applying for such regular appointment and not with reference to the time when they were initially appointed by way of local arrangement on ad hoc basis about 10

years back, as was urged on their behalf.

21. Thus, a very sad picture emerges. There has been a total callousness on the part of the Executive as well as the Gujarat Public Service Commission which is a constitutional authority, in the discharge of their important constitutional functions in the matter of making appointments to the cadre of Lecturers, Gujarat Education Service, Class II (Collegiate Branch). Appointments on ad hoc basis were made from time to time and there has not been any attempt to consult the GPSC by sending requisitions for all these posts or for extension of ad hoc appointments beyond one year of the initial appointments. From what the learned Advocate General and the counsel for the GPSC have stated before us during the arguments, though quarterly statements of the ad hoc employees were required to be sent to the GPSC, as per the government orders in force, they were in fact not so sent for over a decade. The government, in their Education Department, put up an excuse in their communication dated 18th August 1998 addressed to the GPSC that the ad hoc lecturers were appointed locally till the end of the academic term, but some of them obtained interim orders from the Courts for being continued till regular PSC recruits were available, and therefore, they had to be continued. The PSC in their letters dated 27th January 2000 and 12th March 2001 addressed to the Government lamented that despite their reminders, no information of ad hoc lecturers was being furnished to it, nor was any proposal received by it for continuing such ad hoc employees. In the letter dated 12th March 2001, the GPSC raised its meek voice stating that it was neglected for over ten years in respect of these ad hoc appointments, and that it took serious note of indifference and negligence of the Government and further that, if reply was not sent in 15 days, the PSC will make a note of this matter in its annual report (under clause (5) of Article 320). On 20th March 2001, the Government sent reply to the GPSC with a request not to make a note about its lapse (of not consulting the GPSC) in its annual report. The correspondence was shown to us by the learned Advocate General and the learned counsel for the GPSC, because, during the hearing, we asked them to explain to us the inaction on the part of the Executive and the GPSC that had resulted in the present impasse of the ad hoc lecturers continuing for long years and many over ten years and the GPSC candidates not being appointed as per the recruitment rules for all these years. Copies of this correspondence are placed on record and it makes a dismal reading showing the utter careless and indifference of both these

august bodies.

22. No chastisement nor expressions of dismay and disappointment have yielded any result in the past. This is because the concerned officials of the Executive and the GPSC may be labouring under an impression that nothing more can be done in respect of such conduct amounting to negligence, recklessness in discharge of duties in public office or breach of statutory duties. Administrative law directly affects the functioning of the Executive by issuing writs or orders instructing the administration how to act or what to refrain from doing, in accordance with their statutory duties. Yet, there are many situations where the administration may have functioned improperly, but no effective remedy can be employed post facto. What is done is done, to be left as "fait accompli". Usually administrative law does not award monetary compensation over losses caused by the infringement of rights except in rare cases, but in this regard, tort law makes a huge difference. As one of the aims of judicial review is to encourage the public authority to function properly through deterrence, it stands to reason that tort law may and often prove to be more effective deterrent than administrative law, for, the authority may take risk of being ordered to change its ways if court order is issued, but it may hesitate to take such risk if it involves liability to pay substantial compensation. In cases where plea of immunity is not legally available, the court may consider whether to impose tort liability on public authorities exercising statutory powers and while doing so, it is actually engaged in judicial review of the decision and functioning of the executive in order to decide whether the latter exercised its powers properly. The imposition of tort law liability is tantamount to a finding that the executive failed to function properly, and that, affected person is entitled to rectifying remedies against the authority. This venue of judicial review would co-exist with the judicial review conducted by the Courts by applying administrative law, to make the constitutional remedies more effective in the public law field.

22.1 Though standard of negligence applied by the Courts in determining where a duty of care has been breached cannot be applied to policy decisions, it can be applied to operational decisions. Accordingly, it is possible that a duty of care may exist in relation to discretionary considerations which stand outside the policy category in the division between policy factors on one hand and operational factors on the other. A public authority may be under no duty of care in relation to

decisions which involve or are dictated by financial, economic, social and political factors or constraints. But, it may be otherwise when the courts are called upon to apply standard of care, to action or inaction, that is merely the product of administrative direction, expert or professional opinion, technical standards or general standards of reasonableness. The duty of care should apply to a public authority unless there is a valid basis for its exclusion as in case of a true policy decision of the government. Why should people caused foreseeable injury by the careless acts of others not have a right to compensation against those with some responsibility or an authority to prevent the wrong in question merely because the activity related to public law sphere? The executive authorities enjoined with the duty to consult the Public Service Commission for recruitment as per the recruitment rules were acting in the sphere of the operational part of the process as distinguished from the policy decision division requiring the recruitment to be made as provided by the recruitment rules. Even relaxation aspect may be considered as a part of policy decision under the Rules. But the function to send requisition to consult the GPSC was purely an administrative function involving no policy considerations or a quasi-judicial process. The consequences of continuing the ad hoc appointments beyond permissible one year without consultation, resulting in the ad hoc employees remaining in ad hoc status for a number of years which was wholly irregular in absence of the consultative process could have easily been foreseen by the concerned executive officers, who did not take reasonable care in discharge of their functions, which required them to send requisitions for regular direct recruitment through the PSC and even to consult it for ad hoc continuance of these temporary employees or to do any permissible relaxation in consultation with the PSC. Such careless default on the part of the executive authority directly resulted in ad hoc continuance of all those lecturers for so many years that it may have virtually washed away any opportunity to settle again, which they would have had if they were relieved after one year of ad hoc appointment or on being considered as to whether they could be absorbed by a legitimate process within the bounds of statutory rules governing the services. There are no legitimate and proportionate reasons to show why the authority failed to act in the way it did. Now that compensation can be awarded against public authorities for violation of fundamental rights in exercise of their powers, there is no rationale for any wide exclusionary rule for such liabilities.

23. The tort of misfeasance in public office has two

forms, which are the alternative ways in which such tort can be committed, namely, (1) cases where public power was exercised for an improper purpose with the specific intention of injuring a person or persons (i.e. targeted malice), and (2) cases where a public officer acted in the knowledge that he had no power to do the act complained of and that it would probably injure the claimant. In the second category of cases, an act performed in reckless indifference as to the outcome was sufficient to ground the tort. When the public officers acts with a state of mind of reckless indifference to the illegality of his act, it involves bad faith inasmuch as the public officer does not have an honest belief that his act is lawful. The misfeasance consists in the purported exercise of a power otherwise than in an honest attempt to perform the relevant duty. It is that lack of honesty which makes act an abuse of power. The rationale of this tort of misfeasance in public office is that in a legal system based on rule of law, executive or administrative power may be exercised only for the public good and not for ulterior and improper purposes. Reckless indifference to consequences is as blameworthy conduct as deliberately seeking such consequences. It has been treated as settled law in England that an act performed in reckless indifference as to the outcome is sufficient to ground this tort. (Lord Steyn in Three Rivers DC v. Bank of England (No.3), reported in [2000] 3 All ER 1, also see Lord Hope in Three Rivers DC v. Bank of England, reported in (2001) 2 All ER 513, paragraphs 42 and 44].

23.1 Torts may arise as a result of malfeasance, misfeasance or non-feasance. Malfeasance would be a wrongful act by a State officer in performance of the officer's duties that is substantially outside the scope of the authority of the officer and that substantially infringes on the rights of a person or entity. As malfeasance requires the intentional commission of an unlawful or wrongful act, the focus is on the action taken by the official. In contrast, non-feasance focuses on the official's failure to act. Misfeasance has been defined as malicious abuse of power, deliberate maladministration and unlawful acts causing injury by public officer. While actual malice, if proved, would render the public officer's action, both ultra vires and tortuous, it would not be necessary to establish actual malice in every claim for misfeasance in public office. (See Common Cause, a registered society v. Union of India (1999) 6 SCC 66, paragraphs 82 and 98). Misfeasance is now recognised as imputable to discharge of duty arbitrarily. Misfeasance being a deliberate

tort, the focus is on the state of mind of the wrong-doer at the time the relevant act is done or omission is made. For the purposes of misfeasance, the mental element is satisfied by either (1) evidence of malice, or (2) knowledge of the absence of power which includes reckless indifference as to the extent of power. Malice will exist if the act was done with an actual intention to cause injury. The requirement of malice will also be satisfied if the act was done with knowledge of invalidity or lack of power and with knowledge that it would cause or be likely to cause such injury. The present case is a case of the executive recklessly discharging both a known constrain on its power and the permissible means of fulfilling its known duty of acting as per the statutory rules in the matter of appointments to the posts of Lecturers, GES, Class II. Here the constitutional provisions, the recruitment rules and the general rules having force of law protect the interests of the eligible persons of being given an equal opportunity in the matter of public employment i.e. from being considered for the post of Lecturer, GES, Class II as per the recruitment rules in consultation with the GPSC which interest was jeopardized by the executive by continuing ad hoc appointees contrary to law. The present case is not of targeted malice but of knowledge of the absence of power which includes the reckless indifference as to the extent of power. A broad notion of malice would include such knowledge and reckless indifference. The inclusion of reckless indifference as a relevant state of mind is consistent with the notion that misfeasance is a deliberate tort.

23.2 The exercise of power by not sending the requisition causing the ad hoc lecturers to continue contrary to the recruitment rules was invalid in the sense that the concerned public officer had no power to continue them beyond one year without consultation with the PSC and by continuing them beyond one year, the power had been miscarried by the public officer. Thus, the first element of the tort of misfeasance in public office, namely, the public officer committed an invalid act or omission stands established on admitted facts.

23.3 Second element of this tort which requires that the public officer knowingly acted in abuse of power is also established, because, it is evident that the public officer involved acted with actual knowledge of lack of power to continue ad hoc appointees beyond one year in face of the specific provisions of the Constitution, the Recruitment Rules and the General Rules and in arbitrarily continuing the ad hoc appointees and not

following the recruitment rules and procedure prescribed for recruitment to the post.

23.4 The third element of this tort of injury being suffered by the persons concerned is also present, because, as a result of the wrongful act of the public officer in not sending requisitions for 435 posts from time to time to the GPSC as per the statutory requirements, and wrongfully continuing the ad hoc appointees for more than ten years acting with reckless disregard to the legal consequences of such act and omission, the aspirants for the posts have suffered disadvantages that they may not have suffered if the power had been validly exercised.

23.5 Thus, apart from the tort of negligence (which is the failure to exercise reasonable and prudent care in relation to a situation), the public authority would commit tort of misfeasance in public office when acting in reckless indifference as to the outcome of its act which he had no power to do, tort of nonfeasance in public office on failure to perform specific acts that are the required duties of the officer, and general tort of breach of statutory duty where it commits breach of a particular statutory duty. In the present case, statutory obligations required the executive authorities to fill up the posts of lecturers in government colleges by following the procedure of direct selection through the GPSC for which the requisitions were to be sent when the vacancies arose. The law did not permit ad hoc appointments to these posts beyond one year without consulting the GPSC. The executive authorities did not consult the GPSC for over ten years and continued the appointments of the ad hoc lecturers illegally. This breach of statutory duty cast upon the executive was obviously known to the concerned authorities. They acted with reckless indifference to the consequences of their inaction in the matter of undertaking the process for direct recruitment and committed breach of the statutory provisions by continuing the appointments of ad hoc appointees beyond one year without consulting the GPSC. The consequences of their reckless disregard to the statutory provisions was that the periodic PSC examinations in which selections could have been made for direct recruitment were not held thereby denying those who could have competed, an equal opportunity in the matter of public employment. The conduct of the authorities in arbitrary continuance of ad hoc appointees was violative of fundamental rights of others, who would have otherwise had an opportunity to compete for selection, had the executive initiated the process of

recruitment to 435 vacant posts in time, as per the recruitment rules. The executive authority, therefore, clearly acted with a state of mind of reckless indifference to the illegality of its act and the risk of violating the fundamental rights of the prospective candidates under Articles 14 and 16 of the Constitution. By not sending the requisitions to the GPSC in time, the executive authority failed to perform its required duties. Even though special damages cannot be the subject matter of public law proceedings, the improper interface between notions of unlawful acts in judicial review proceedings and rights to damages in tort means that some victims of bureaucratic recklessness in discharge of statutory duties currently go uncompensated. We may however put the public authorities guilty of the tort of misfeasance or non-feasance in public office or the general tort of breach of statutory duty to guard that they would be liable to action for damages for such acts, if claimants were to seek damages for consequential economic loss by establishing that the public officers acted in the knowledge that his act would probably injure the claimant.

24. In public law, claim for compensation is a remedy available under Article 226 for enforcement and protection of fundamental and human rights and the defence of sourvereign impunity is inapplicable and alien to the concept of guarantee of fundamental rights. As held by the Supreme Court, such remedy is a practical and inexpensive mode of redress available for contravention made by the State and its servants in purported exercise of their powers and enforcement of the rights or duties under the Constitution or the law. (See Consumers Education & Research Centre v. Union of India, reported in (1995) 3 SCC 42). Moreover, the principle of vicarious liability apply as much to misfeasance in public office as to other torts involving malice, knowledge or intention, (See Racz v. Home Office (1994) 1 All ER 97). The Supreme Court has held that the remedy of compensation available in public law is "distinct from and in addition to the remedy in private law for damages for tort", resulting from the contravention of the fundamental rights [See Nilabati Behera (Smt) alias Lalita v. State of Orissa reported in (1993) 2 SCC 746, D.K.Basu v. State of W.B., reported in (1997) 1 SCC 416, Common Cause, A Registered Society v. Union of India, reported in (1999) 6 SCC 667]. In case where the tort of misfeasance or non-feasance in public office or of general of breach of statutory duty is established and no factual dispute arises in respect of such default in public law proceedings, the court will be within its

power to award compensation as a remedy against the defaulting public officer and also the State Government for its vicarious liability. Such interface between the public law remedy and tort law would be essential to meet the ends of justice and will act as a deterrent against the public authority for preventing it from acting with a reckless disregard of the statutory provisions to the detriment of the public.

25. The continuance of these ad hoc lecturers for many years beyond the first year for which the consultation from the GPSC was not necessary in view of the ad hoc nature of appointment may have nurtured hope in them that they will be regularised. In fact, in the office note, which is at Annexure "II" of the affidavit filed on 14th October 2002 in Letters Patent Appeal No. 817 of 2002, there is a reference to the fact that the office bearers of the Association were heard by the Hon'ble Chief Minister on 17-5-1999 in a public relation meeting, and that the Chief Minister had given a direction that the decision would be taken on the basis of the report of the Cabinet Sub-Committee, and that, in principle, it was decided to continue these ad hoc employees and the concerned Minister will give directions as to the matter of holding of examination by the PSC. Though this note cannot be said to be an order of the Government and only reflects that the matter was in contemplation of the Government, such consideration would have given the ad hoc lecturers to understand that they will be regularised in service. Even in the affidavit of the Government filed on 14th June 2001 in Special Civil Application No. 2395 of 2000, it was stated that the Government had, pursuant to the order dated 4-5-2001, made in the said petition, directing the State Government to decide the representations of the ad hoc lecturers, taken a decision that the services of all the 330 persons appointed as lecturers in government colleges on ad hoc basis from time to time by the Commissioner of Higher Education pursuant to their selection by local selection committee constituted under the circular dated 21-12-1992 should be regularised from the date of their appointment as was done in the case of Medical Officers, Ayurved, Class II, under the G.R. dated 4-12-1999, and that for regularising the services of all such ad hoc appointees, a reference to the GPSC should be made to obtain its approval, as a special case. There was, therefore, clear indication that the case of these ad hoc employees would be regularised in consultation with the GPSC. However, that stand was changed, when it dawned on the Executive that they committed a legal blunder, in the affidavit, because, these ad hoc appointees could not have been

regularised contrary to the Recruitment Rules in the post for which direct recruits were already selected through the PSC. In fact, according to us, these matters should not be viewed as having a "lis" between the ad hoc lecturers and the regular direct selectees. The direct selectees cannot be penalised to wait though selected as per the statutory rules through the PSC. They are rightly allowed to man the posts earmarked to be filled by them. The ad hoc lecturers, if at all, will have a legitimate grievance against the executive for continuing them on ad hoc basis for all these years without consultation with the GPSC, creating a hope in them that they will be some day absorbed. The executive acted in an arbitrary fashion in continuing them contrary to the statutory rules which empowered it to make ad hoc appointments only for a year and in breach of its statutory obligation to fill the post in the manner prescribed by the Rules. It will be for the government to consider the feasibility of giving appropriate relief in consonance with their statutory powers where such ad hoc appointees have been continuing over a long number of years. Issuing general declaration of indulgence is not the part of a court's jurisdiction, as held in Piyara Singh's case (supra) by the Supreme Court. The contentions raised on behalf of the appellants cannot, therefore, be accepted.

26. Though these ad hoc lecturers cannot be directed to be continued contrary to the recruitment rules, nor can they be ordered to be regularised by any mode not warranted by the statutory rules governing the appointments to the cadre of Lecturers, GES, Class II (Collegiate Branch), in the facts and circumstances of the case, we direct that these ad hoc lecturers be treated as a separate class in view of their ad hoc continuance for nearly a decade due to reckless indifference in discharge of duties on the part of the executive and be considered for absorption in such posts as may be available with the government or under the authority of the government in consonance with the statutory provisions applicable to such posts. The State Government is also directed to inquire into the serious lapse of not consulting the GPSC while continuing these ad hoc lecturers contrary to Recruitment Rules beyond one year and fix the responsibility for the careless default that has resulted in the ad hoc lecturers being continued for long without consultation with the GPSC and for the posts not having been filled through the GPSC, as per the Recruitment Rules and the General Rules for over a decade, especially when there was no interim order of any

Court, as we are told, which could have prevented the process of regular recruitment.

26.1 For the reasons indicated above, we also direct that each of the appellants - ad hoc lecturers who are ordered to be relieved by the impugned action of the State Government be paid, by way of a token compensation, one month's salary, and such amount be recovered from the defaulting officers who may be found by the State Government to be responsible for the inaction in sending requisitions to the Gujarat Public Service Commission or in not consulting it while illegally continuing the ad hoc lecturers beyond one year of their initial local appointments, without bothering to consult the GPSC under the Rules.

26.2 Subject to the above directions, all these Letters Patent Appeals are dismissed with no order as to costs. All the Civil Applications which are filed in these Letters Patent Appeals stand rejected with no order as to costs.

27. At this stage, the learned counsel for the appellants prays that the operation of this order may be stayed to enable the appellants to approach the Higher Forum. This prayer is not justified at this distant point of time and especially when the direct recruits who are already issued appointment orders are waiting for their posting. The request is, therefore, not acceded to.

[R.K.ABICHANDANI, J.]

[SHARAD D. DAVE, J.]

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